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NATIVE OFFENDERS' PERCEPTIONS OF THE CRIMINAL JUSTICE SYSTEM

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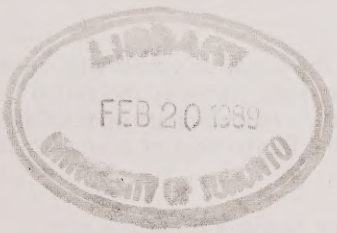
NATIVE OFFENDERS' PERCEPTIONS OF THE CRIMINAL JUSTICE SYSTEM



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University of Ottawa
1988

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ABSTRACT

The primary purpose underlying this study was our desire to accord a voice directly to Native peoples in conflict with the law so that they could express their opinions about and personal experiences with the sentencing process. Although the tragically high numbers of Aboriginal men and women in our federal and provincial correctional facilities have been well known and documented for many years, little has been done beyond describing the magnitude of the tragedy. Sporadic demands for change are issued and governments respond by expressing their sorrow over the situation. All the while, the voices of the Aboriginal inmates are largely muted. We hoped that this report helps in some small way to assist in disseminating the views of Native offenders for themselves. The opinions and concerns that are expressed in this study are conveyed anonymously and provided a basis for recommendations for future change.

The inmates and parolees interviewed offered positive insights in addition to expressing their anger at being treated unjustly in a process they perceive to be unfair. Their comments are naturally influenced by their personal backgrounds, their initial involvement with the law, and later by their perceptions and experiences with police, lawyers, judges and other members of the criminal justice system. Some of their comments are supported by existing statistics and others are sustained by recent written reports. The high representation of Indian, Metis and Inuit people in the criminal justice system and the constant need for special services to be provided persists, and will persist until there is significant reform.

The main thrust of this report is to present the views of inmates and parolees concerning the sentencing process. This was accomplished mainly through group

discussions, personal interviews and the completion of very long and detailed questionnaires. The responses varied considerably between provincial and federal inmates. It seems that the longer prisoners are in the correctional system the more aware they become that it is a complete system. Although some of the more "sophisticated" inmates were bitter toward the system and toward the predicament in which they find themselves, most offered concrete recommendations for change and some indicated their hope that changes would materialize.

PREFACE

This project truly began in the Spring of 1985 as a result of various factors. The Canadian Sentencing Commission (CSC) decided that it had failed to address the position of Native offenders specifically in the over 30 research studies that had been undertaken at that time. One of the Commissioners, Al Chartrand, was particularly instrumental in encouraging the CSC to solicit a project on the views of Aboriginal people in prison. Linda Lock and I were invited to develop a proposal and submit it for consideration. It was speedily approved and we set to work almost immediately.

Professor Lock, who was then a full-time graduate student in law, and I quickly created a strategy, an exhaustive questionnaire, and a travel plan. Almost before we knew what had hit us, we had obtained the assistance of the Canadian Penitentiary Service, a number of wardens, and many Native Brotherhoods and Sisterhoods. After receiving help from several sources, and particularly the Sisterhood of the Kingston Penitentiary for Women, the questionnaire was ready for use. Linda then began the long and arduous task of travelling through five provinces to visit 19 correctional facilities and one half-way house. Although we initially hoped to cover the North, Quebec and the Atlantic Provinces, the CSC was unwilling to provide sufficient financial assistance to cover the travel expenses that would be entailed by a national study. We also suffered generally from extremely limited funding and time constraints. Linda Lock is, then, the one deserving of primary credit as she undertook all of the interviews, collated the results and prepared a draft of much of the report. My primary role has been as supervisor, prodder, editor, and co-writer.

I also wish briefly to mention here several of the other key limitations to this study. Our research lacks a comparative element as there are no control groups to

which we can contrast our data on Native offenders. We did not have either the finances or the mandate to interview an equivalent group of non-Native offenders to determine if the results of our survey are in any way unique. I believe that it would have been appropriate in addition to survey Indian, Inuit and Metis peoples outside the correctional system so as to ascertain the degree to which the views of Native offenders are representative of the Aboriginal population as a whole. It must also be admitted that the sample size as a total reflects a low figure on which to assess statistical significance. This problem is compounded when one realizes the relatively large number of institutions canvassed in relation to the interview population. I particularly note the limitation on the data in making comparisons between men and women. All of these concerns are explored in greater depth in Appendix 1.

It should be realized, however, that the purpose of this research was to assist Native offenders to express their opinions generally about the entire criminal justice system and how they want to see it changed. We do not claim that these views are accurate or that they prove the system is unjust. We also are not stating that the data demonstrates that non-Native offenders are in a different position or have different attitudes as there is no control group for comparison. We are instead merely suggesting that our study captures the genuine feelings of an important and far too often overlooked segment of the criminal justice system, namely, the Aboriginal inmates.

I would further like to acknowledge the assistance of several people. Ms. Renate Mohr of the CSC was always very helpful to us when we needed it. Professor Jean Paul Brodeur, Research Director of the Commission, also was of assistance. Dr. Julian Roberts must be particularly mentioned with gratitude, as when he was with the CSC he arranged for the use of a computer to conduct the cross-tabulation of selected data. In his current capacity with the Department of Justice, he has again been

instrumental in seeing this publication through to completion. Dr. Carol LaPrairie also was of great help with her insightful comments and suggestions during the first life of this project.

I also want to seize this opportunity to thank several other people who aided us along the way beginning with Sue Beaubien who helped tabulate the raw data in 1985. Mona Carkner has performed far beyond the call of duty and has suffered through umpteen revisions and complete rewrites in producing a manuscript. She has managed to always exceed my unrealistic deemands with a smile. What's more, she went through this whole process in typing the Report to the CSC in 1985 and once again with this complete rewrite. The final person to be deeply thanked is Robert K. Groves as this monograph would not be appearing in print if not for him. He was invaluable in reworking some of the data and assisting me in editing the text so that we could provide the Department of Justice with a more concise, and I believe much improved, report within a short time frame.

Although the actual research and interviews were conducted in 1985, I believe that the information and the opinions of the Aboriginal participants themselves are still vital today. As mentioned at the beginning of this Preface, the publication you are about to read had its genesis with the Canadian Sentencing Commission. The Native Offender Report was submitted to the Commission by Linda Lock and myself in October of that year. It has now been completely rewritten and revised. I hope that the reader will find the research and our recommendations to be of some value.

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March 1988

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INTRODUCTION

Native people are the single most over-represented population of inmates in the Canadian judicial system. The number of Native inmates in federal institutions in the early 1980s was 10%. The latest estimate from the National Parole Board in November 1987 was that this situation still held true. From the vantage of federal Native population estimates and the 1981 Census figures, this is at least twice and perhaps five times what would be expected on the basis of the percentage of Native people in society at large.[1]

At the provincial level, the figures are even more disturbing. During the same period, the percentage of Native inmates in provincial institutions west of Quebec ranged from a low of 10% in Ontario to over 50% in Saskatchewan. The percentage of native to non-native sentence admissions in other jurisdictions fills in the middle-ground: British Columbia with 17%; Alberta at 25% and 45% in Manitoba.[2] Significantly, the problem appears to be growing at an alarming rate, with a jump in Native sentence admissions ranging from 3 to 5 times the 1971 figures for the same provinces.[3]

How are we to account for these startling figures and the human and social cost that they reflect? Over the years various hypotheses have been advanced by academics, professionals and policy analysts to try and explain Native over-representation. Most have focussed on the socio-economic, historical, cultural and political characteristics of the Native population, reflecting a natural tendency to see the excessive incarceration rates of Native people as one of the "social conditions created by the effects of colonialism, chronic poverty, racism and legal dependency".[4] While it is sensible to view these factors as important in the search for explanations of Native over-representation, almost no study has been given to the possibility that the justice system itself, and the broader society it reflects, is implicated by being non-adaptive and non-responsive to Native realities.

In the absence of detailed analysis of the justice system and its operations, the opportunity to address how "the system" might be changed is minimized if not precluded, as is the opportunity to target the system and its components for change. By default, Native sociological, economic, political and cultural realities are cast as "the problem". The analyst determined to take the next step and identify potential solutions has only one recourse: to link the prospects for lower Native inmate statistics with prospects for change amongst Native people. For public policy, the same step is usually reflected in assimilative or integrative strategies to "normalize" Native sentencing figures.

Regrettably, "blaming the victim" is a recurrent analytical theme in Canada. As William Ryan has described it, blaming the victim is:

> ... to look sympathetically at those who 'have' the problem in question, to separate them out and define them as a special group, a group that is different from the population in general ... that difference is in itself hampering and maladaptive. The different ones are seen as less competent, less skilled, less knowing - in short, less human.[5]

The result, for Ryan, is "a brilliant ideology for justifying a perverse form of social action designed to change, not society, as one might expect, but rather society's victim".[6]

This paper reports on data collected in a first attempt to go beyond "blaming the victim" by assessing how the people most directly concerned - the Native offenders themselves - perceive their treatment and express how they would like to have change implemented. There are, however, clear limitations in the data that must be recognized (see the Preface and Appendix 1 for a further discussion on these weaknesses in the study).

Our attempt to correlate inmate views on the sentencing process and the wider justice system with basic socio-economic and demographic data is primarily exploratory. Nevertheless, we feel that by introducing the views and opinions of a

cross-section of Native inmates, a necessary first step has been taken toward viewing the unique situation of Indian, Inuit and Metis peoples as requiring change on the part of the system they encounter, rather than seeing Natives as a "problem population" that must respond in subordination to the dominant society and its justice system.

Preliminary Considerations

Before one can address the information provided by the data collected from Native offenders, it is necessary to discuss the issues that affect Indian, Metis and Inuit peoples as a whole. One area of concern is the number of theories that have been attached to Native criminality, usually of a "blaming the victim" nature. In our view, the whole system must be addressed and parts changed if necessary to accommodate the Aboriginal population as a viable, recognized group in Canadian society.

George Manuel, an outspoken and longstanding Indian leader, declares in his book, The Fourth World,[7] that Native people, due to their aboriginality, constitute a unique population within the Canadian Mosaic. They maintain resistance to non-Native insistence upon assimilative programs. Manuel calls it the Fourth World mind-set, where displaced Aboriginal people refuse the dictates of non-aboriginals. In following this line of thinking it is, therefore, necessary to consider Native peoples' opinions when examining the discrete procedures and structures that constitute the Canadian justice system.

Many causes have been advanced as candidates to explain the over-involvement of Natives in the criminal justice system. The following are only a few:

(i) all Native offenders are members of a pathological community characterized by extensive social and personal problems;

(ii) minority status in itself makes a group more criminal;

(iii) an impoverished economic status is the problem; or

(iv) Native criminality is reflective of a pattern of covert hostility which becomes overt under the influence of alcohol.[8]

Jayewardene is critical of such hypotheses as they focus on the Native as the problem in adapting to the dominant society, i.e., "blaming the victim". The researchers, Verdun-Jones and Muirhead, are also critical, but from a different perspective:

> [T]he majority of studies have focussed upon a number of decision-making points in the criminal justice process without making any effort to relate the findings to the broader context of the status of native peoples in Canadian society. What is required is a more comprehensive, multidisciplinary and integrated focus which would draw together a number of perspectives. The involvement of native peoples with the criminal justice system must be viewed in the light of the history of their colonial status vis-a-vis the dominant white society and their present socio-economic situation.[9]

Jim Harding links alcohol with underdevelopment, avoids "blaming the victim", and cautions against using racially specific views or disease model diagnoses for alcoholism. He states that:

> If social problems can be explained by referring to race, there is no need to look at historical and economic conditions ...

and thus

> Instead of assessments of social impact we get generalities and rhetoric about 'northern development' and racist innuendo about the underdevelopment of people of Indian ancestry.[10]

In light of these perceptions, it is important to examine some historical and economic factors as part of this study. In essence, the whole situation has to be assessed as opposed to just a part of it. As suggested by Don McCaskill and the Solicitor-General's User Report,[11] a more appropriate way to do 'justice' would be to focus on the criminal justice system and its response when confronted with social

injustice. Thus, the application, the legitimacy and the meaning of the judicial system as it affects Native people is examined in the following text.

The system has imposed itself on Native people since they became less useful economically or less influential militarily and politically. The theory was that Native people would lose their culture and become assimilated into the mainstream. Missionaries, Indian agents, and others were sent to isolated reserves to justify the values and norms of western civilization. Canadian institutional order and society presumed that Native people understood the complexity and logic of a system, the complex dynamics of which they were never educated about. The criminal justice system was also designed to enforce the values taught by missionaries and government. Since Aboriginal people were unable to retain their traditional political structure for support, they had little to say about this process. Over time, the primary aim of the government was partially fulfilled; however, it seems relatively few Native people have willingly adopted the dominant society's values or fully understood the complexities involved. McCaskill pursues this line of thinking by saying:

> It is important to understand that any legitimation effort involves a cognitive as well as normative element. In other words, legitimation is not just a matter of values; it always implies knowledge as well. Legitimation not only tells the individual why he should perform one action and not another; it also tells him why things are the way they are. For this to occur, individuals need to acquire extensive first-hand experience with the institutional structure. With native people isolated on reserves and rural settlements away from contact with white society, this could not occur. Native people, therefore, could have no understanding of the structure and functioning of the legal and judicial systems.[12]

The dominant society, through its legitimizing programs, has been disdainful of Native societies by regarding them as unfavourable while having no knowledge of their social and cultural richness. This predicament has left Native people in a turmoil of

negative, conflicting and confused identities. It is not surprising that some Native people view the system as an enemy. They have had negative experiences first hand, often from an early age through the child welfare system,[13] and, later on, in the criminal justice system.

The present criminal justice system is at odds with the traditional process of dispute resolution that is still practiced by many Aboriginal communities. A people as a people in any circumstance will maintain their own society and customs, especially when they do not understand another system which is seen by them as oppressive. Today Native people continue to live in two systems; one which they understand as their own and the other which is, and which is seen as, dominant and dominating.

Native societies, historically non-literate, were ruled essentially by morality laws derived from tribal custom and maintained by oral tradition. The legal system was seen as effective when it fostered social harmony.[14] Native nations had their own political, social, economic and religious institutions. Although each nation was culturally and linguistically diverse from the others and each developed their own methods of dealing with deviance, there were common elements shared amongst them. For example, ostracism, mockery, banishment and compensation are only a few of the remedies used for resolving disputes.

The purpose was essentially the same: to provide recompense to the victim and maintain harmony in the community. The punishment used for offensive acts against etiquette, morals, religion or the economy (i.e., theft) was ridicule. Conflicts of interest were dealt with on a co-operative basis due to the very high social consciousness of the group members. The punishment meted out usually stressed conformity to the prescribed code of ethics rather than social vengeance. The seriousness of the crime was gauged according to the degree by which the

consequences affected the clan or the society as a whole. Therefore, the punishment fit the crime and was dealt with on an immediate basis.[15]

One must keep in mind, however, that the Native way of thinking of "punishment" was not equivalent to the common law belief in "punishment". Rather, it focussed on compensation for the victim; the debt was owed to the aggrieved individual or community by the offending individual or community. The wrongdoing could be dealt with either through compensation of wealth or the death (sometimes ceremonial) of the offender, or death of someone of equal status to the victim. Sometimes the offender would take the victim's place and take over his responsibilities, i.e., as husband, father, son, food provider, etc.

An understanding of the traditional methods of dealing with deviance is necessary as it demonstrates how a cultural group is affected by its customs and laws. It shapes how individuals perceive and assess the world they inhabit and how they respond to it. Native people traditionally delimited individual property and its accumulation. Concentration of private wealth and property was frowned upon. Sharing usually meant reciprocal obligations rather than permanent one-way transfers of ownership.[16] This value was appropriate in small, face-to-face societies. However, in a larger society characterized by urban anonymity, such a value system clashes, with theft and trespass charges as subsequent results.

Native core values are not, however, so different from the values of the dominant Canadian society. The conflict arises from inadequate understanding of each others' values and rules. This suggests that one group is not more criminally apt than the other and, thus, should not be labelled as such. For example, in both societies the value of sharing is actually held in high esteem. The Native person, however, shares his assets openly whereas the non-Native shares indirectly through contributions toward the welfare system (albeit taxpayers' money) and charitable donations.

Although the Native person gives as much as needed and the non-Native may give a required percentage of his earnings, the principle remains the same.

McCaskill suggests that the high incidence of Natives in conflict with the law seems to have arisen with out-migration from the reserves to the cities and consequent Native attempts to compete within the structure of the dominant society. It seems the closer a reserve is to industrial areas, the higher the Native crime rate; the more isolated the reserve, the lower the crime rate.[17] Economically, the Native's position in society is a deprived one. A criminologist, John Hylton, outlines the following description of the inequities and difficulties faced by Native people in the present system:

> Mortality rates for Indians are significantly higher than those for non-Indians in all age categories. Among 20-44 year olds, the Indian rate is 4 times the non-Indian rate.
>
> Life expectancy for a one year old Indian child, a reflection of health standards, is ten years less than the life expectancy for a one year old non-Indian child.
>
> A larger proportion of post-neonatal mortality (deaths from one month to one year) in the Indian population is attributed to respiratory ailments and infectious parasitic diseases, reflecting poor housing, lack of sewage disposal and potable water, as well as poorer access to medical facilities.
>
> Because of malnutrition and poor or unsanitary living conditions, Indians use hospitals about 2 to 2.5 times more often than the national population.
>
> In 1977, more than 1,250 Indian families were living in houses that were recorded as needing replacement.
>
> In 1977, one in three Indian families lived in over-crowded housing.
>
> The number of reserve houses needing repair has increased tenfold since 1960 so that one in four houses now requires repair.
>
> In some areas, Manitoba and Saskatchewan, for example, as few as 10% of houses are serviced with running water and sewage disposal.

> Some 11,000 new houses are currently needed to relieve overcrowding and replace inadequate housing. To meet this demand, the federal government would need to double the current construction rate for the next five years.
>
> Attendance at university is half the national rate.
>
> Retention through to the end of secondary school is about 20% compared to a national rate of 75%.
>
> Enrollment in secondary, post-secondary, vocational and adult education programmes peaked in the early 1970's and has been steadily declining ever since.
>
> Educational programmes beyond the primary level are usually unavailable within Indian communities.
>
> The proportion of Indians engaged in the labour force has not increased over the past 10 years.
>
> Indian incomes are two-thirds to one-half the national levels.
>
> Only 32% of the working age population is employed.
>
> Although job seeking appears to be one of the main reasons for leaving reserves, Indians off reserves experience rates of unemployment and welfare dependence between 25% and 30%.
>
> Most reserves lack any sort of economic base. In the absence of successful job creation, social support may double over the next 10 to 15 years.
>
> Welfare dependence, which sometimes approaches 70% and appears to be increasing, reflects poor social conditions and economic opportunities on reserves.[18]

Overall, the situation for Native people in Canada looks pretty desolate. On the other hand, progress is being made in areas that may create positive long-range effects, e.g., successful land claims, reaping the benefits from their natural resources, and educational advancement of Native people. The high incidence of Native people in conflict with the criminal justice system, however, remains an indisputable fact.

Analytical Approach

This study draws principally on data gathered in our survey of Native inmates selected from federal and provincial correctional institutions. The design of the survey questionnaire (see Methodological Note at Appendix 1) was motivated by a concern to bring a balanced focus on opportunities for change. With this in mind, data were sought that reflect the interplay between the different categories or classes of Native offenders and the procedures and personnel of the justice system they encounter.

The study was designed to permit correlation analysis within and between two dimensions:

1. the socio-demographics and conviction and sentencing histories of the Native inmate population; and
2. inmate views on each of the major phases of the justice system encountered: policing; legal representation; court sentencing; incarceration; release procedures, and community and self-help intervention.

1. Socio-Demographics and Incarceration Data

The incarceration histories and socio-demographics of Native inmates are important variables in understanding the complexity of inmate perceptions of the justice system. In addition, these data allow greater validity to be assigned to the assessment of change priorities, by inmates as well as in other studies. Chapter I therefore provides a profile of the socio-demographics and individual incarceration histories of Native inmates using ten variables.

Six variables commonly addressed in Native offender studies were canvassed to provide a base-line socio-demographic profile of the Native inmate population interviewed:

- Age
- Sex
- Employment status
- Educational attainment
- Legal status (i.e., registered Indian, non-status Indian, Metis or Inuit)
- Residence history (reserve vs. non-reserve residence)

In addition, information was sought on the personal history of the inmates across four variables:

- Province of conviction and incarceration
- Number of incarcerations and related pleas
- Nature of offence
- Knowledge of penalty for inmate's offence

2. Inmate Views on the Justice System

The core of the study focusses attention on the "step-by-step" or biographical assessment by Native offenders of the justice system, an orientation that is intended to enhance the prospects for procedural reform. Accordingly, Chapter II of the study provides our principal analysis of inmate opinion data. Six procedures or areas of experience lend themselves to discrete analysis:

- policing
- legal representation and the plea bargaining process
- the judiciary and court sentencing
- institutional treatment
- release procedures
- inmate self-help and community intervention

For each of these sectors or phases of institutional experience, the respondents were asked to assess two major issues: discriminatory treatment and procedural adequacy. Opinion data on each of the six procedural areas, correlated against the

socio-demographic and personal history data, allows for an assessment of Native inmate views on where changes to the justice system should be initiated.

Beyond the general analysis of inmate views of the justice system, two areas have been given special focus, namely, Native women and the Sister/Brotherhood movement. The Sister/Brotherhood movement reflects a partial success of Native people in adapting to a justice system tailored with non-Native inmates and values in mind. They are now found in all institutions surveyed, with the exception of those in Prince Albert and Saskatoon, Saskatchewan. This innovation - which stresses Native group values and spirituality - is generally regarded as invaluable, not only to the inmates, including some non-Native prisoners, but also to the overall operations of the correctional institutions.

The plight of Native women stems particularly from their status, or lack of one, as a sexual minority within a cultural one. As a historically small proportion of the prison population, women have seldom been the focus of special study or concern and have had to adapt to systems and structures designed with the male inmate population in mind. This reality has also led to the concentration of women inmates in fewer institutions. In the case of federal institutions, only Kingston offers facilities for women. This places a particular burden on Native women since they are thereby doubly segregated from societal support. As women, they are perhaps even more separated from their families, and feel separation more, than men. As Natives, they are also cut off from their cultural support system.

3. Questionnaire Coverage

As illustrated in the following table, the survey data were drawn from a pre-tested survey questionnnaire, conducted in the summer of 1985, with 224 self-selected Native inmates in 19 federal and provincial correctional institutions in Ontario,

Manitoba, Saskatchewan, Alberta and British Columbia. In addition, 6 respondents in a Native half-way house operated by the Allied Indian and Metis Society in Vancouver were canvassed.

Most of the opinion-survey questions were structured to permit cross-correlation. However, the "change-orientation" of our survey approach also sought the Native inmate's own, unstructured, opinions on the prospects for change. Consequently, a useful and informative body of data were gathered from individual written responses to open-ended or subjective questions, as well as from group discussions. The results, grouped by broad category of concern, are reported at Appendix 2.

TABLE 1: Questionnaire Coverage

Province	Institution	Total Inmates	Total Natives	Per Cent Native	Native Respondents	Percentage Covered
British Columbia	1. Matsqui	436	66	15%	12	18%
	2. Mission	259	32	12%	12	38%
	3. Oakalla	415	83	20%	12	14%
	4. Lakeside	50	5	10%	1	20%
Alberta	5. Drumheller	530	143	27%	19	13%
	6. Fort Saskatchewan	312	118	38%	15	13%
	7. Lethbridge	180	72	40%	9	13%
Saskatchewan	8. Sask. Pen.	546	161	30%	13	8%
	9. Farm Annex	65	23	35%	10	43%
	10. Prince Albert C.C.	296	252	85%	16	6%
	11. Pine Grove C.C.	53	45	85%	25	56%
	12. Saskatoon C.C.	194	107	55%	19	18%
Manitoba	13. Stoney Mountain	460	141	31%	10	7%
	14. Rockwood	72	22	31%	8	36%
	15. Portage La Prairie	32	21	66%	15	71%
	16. Headingly	377	264	70%	9	3%
Ontario	17. Prison For Women	139	22	16%	8	36%
	18. Collins Bay	492	24	5%	8	33%
	19. Kingston Pen.	440	21	5%	3	14%
OTHER	20. Native Half-way House	23	23	100%	6	26%
TOTAL		5371	1645	31%	230	14%

** Source: Correctional Services of Canada Profile, July 1985 for federal institutions and information from wardens of provincial institutions.

CHAPTER I

PROFILE OF NATIVE INMATES

Socio-Demographics

This section provides data on the age, sex, status, employment, education and residence patterns of the respondents. These factors are critical in assessing the socio-demographic correlates of Native incarceration and in coming to understand the linkage between the dynamics of the Native population and their treatment by, and views of, the justice system.

1. Age and Sex

Don McCaskill's longitudinal analysis of Native inmates from 1970 to 1984 revealed that 57% of his sample was 24 years of age or younger in 1970, as compared to 32% in 1984.[19] This data, along with his findings that only 15% of the inmates were over 35 years old in 1970, as compared with 32% in 1984, suggested to McCaskill that the Native inmate population was aging in relative terms.

It appears that the age range pattern in our study may require some reassessment of McCaskill's findings, although one should keep in mind that the latter study was restricted to Manitoba. Our 1985 sample, as indicated in Table 1.1 below, discloses that 40% were under 24 years and only 16% were over 35 years old, findings that tend to illustrate that McCaskills' 1984 data may not provide an accurate reflection of age patterns in the Native inmate population.

Table I.1: Age and Sex of Respondent

	Male		Female		Total	
	per cent	number	per cent	number	per cent	number
16-19	6.35	11	18.18	10	9.21	21
20-24	30.64	53	32.72	18	31.14	71
25-29	26.01	45	26.64	13	25.44	58
30-34	19.65	34	12.73	7	17.98	41
35-39	5.20	9	3.64	2	4.82	11
40-44	6.36	11	3.64	2	5.70	13
45 and older	5.78	10	5.45	3	5.70	13
	100.00	173	100.00	55	100.00	228

When comparing male and female respondents, the pattern is fairly uniform except for the under 19 and the 30-34 age groups. Only 6% of the males were in the 16-19 group, while 18% of the females fell in that age category. The 30-34 age group also shows marked differences: 20% of the males and only 13% of the females. The over 35 range showed some disparity, through not as high: 17% for males and 13% for females.

Institutional programs that are designed for inmate populations within the system without regard to sex would reflect the majority, i.e., the older males. Consequently, the needs of younger Native females may be overlooked in the process. This, perhaps, can be analogized to Natives and non-Natives in the criminal justice system as a whole where the Native people, as a small percentage of the total population, are often expected to conform to programming designed for the majority. For example, Alcoholics Anonymous, although a self-help group, was conceived on a non-Native basis and is, nevertheless, often a requirement for Native people to attend if they are to be seen as wanting to help themselves so as to gain early release.

2. Status and Sex

In examining the status or identity of the inmates, we employed terms that have a strong sociological, if not always precisely legal, connotation for Native people. For example, the terms "status" and "treaty" are not legally identical, since only about half of the registered or status Indian population in Canada are descendents of "treaty Indians" or receive treaty benefits. Similarly, many non-status Indians view themselves, and may indeed legally be, treaty Indians, although this matter is unresolved in the courts. Nevertheless, Indians in Ontario and westward tend to associate "treaty" with "status" and we adopted this usage for simplicity and in response to pre-test preferences. While there is considerable legal overlap between "Metis" and "non-status Indian", the respondents tended to see them as discrete terms of cultural affiliation.

In regards to the status of the respondents as compared to age, 25% are treaty or status Indians under 24 years old; 25% are between the ages of 25-34; and 9% are 35 or over. Thus, one-half of this sample are treaty or status Indians under the age of 35. The second highest group, the Metis, consist of 7% of the sample aged 24 or under; 9% are between ages of 25-34; and 1% over 35. The non-status or non-treaty Indian category contains 5% of the total respondents who are 24 or under; 8% who are between the ages of 25 to 34; and 3% who are 35 or older. The majority (59%) of the Native offenders who participated in the research are status or treaty Indians. This is less than McCaskill's 1970 sample of 75% and 1984 sample of 66%.[20]

When the correlation between the status and sex of the respondents is examined, the following figures emerge.

Table I.2: Status and Sex of Respondents

	Male		Female		Total	
	per cent	number	per cent	number	per cent	number
Treaty or status	60.00	105	56.36	31	59.13	136
Non-status or non-treaty	17.14	30	12.73	7	16.09	37
Metis	17.71	31	16.36	9	17.39	40
Inuit	0	0	0	0	0.00	0
Other*	5.14	9	14.54	8	7.39	17
	100.00	175	100.00	55	100.00	230

*Other includes non-Native people who completed the questionnaire due to their membership in the Native brotherhood/sisterhood, and/or their spouse was Native as well as two people who were of Native ancestry, but did not feel comfortable in defining themselves as such.

McCaskill suggests that the proportion of status Indians in prisons is diminishing as compared to the non-status and Metis peoples.[21] Nevertheless, the treaty or status Indian offenders remain the majority, as Table I.2 illustrates. The effect of the recent amendments to the Indian Act (Bill C-31) is likely to expand the percentage of status Indians further. When the treaty and status groups are divided on an institutional basis, 48% are located in the federal system and 52% are in the provincial institutions. Thus, this majority is, for the most part, evenly distributed in the two interconnected systems.

3. Employment

Only 36% of the respondents interviewed were employed prior to the time they were convicted of an incarcerable offence. McCaskill used his Headingly sample of

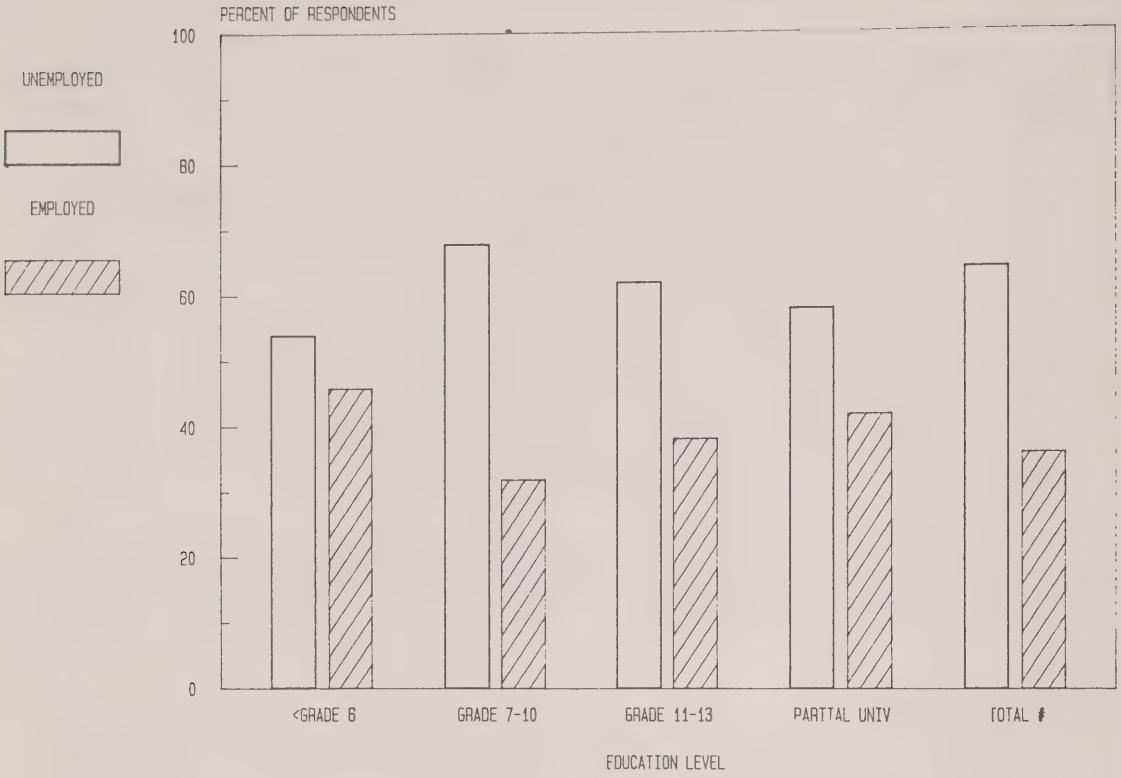
76% unemployment to lend credence to the correlation between law, socio-economic position and crime rates.[22] We can readily concur with this deduction and conclude that the high unemployment percentage presented by the statistics demonstrates that most of the respondents were not economically stable at the time of their arrest.

Our survey illustrated the contrast not only between the employed and unemployed, but also between male and female employment situations at the time of arrest. Sixty-three per cent of our respondents overall were unemployed at the time of arrest, but over three-quarters of the female population were unemployed as compared with about 59% of the males. The female offender population appears to be even worse off economically than male inmates, which is a matter that receives greater attention later in this study.

4. Education

Generally, the grade level attained by most respondents was between grades 7-10 (54%). Taking into account that this is considered to be the borderline literacy level, it does not present a positive picture. With 63% of the respondents having under a grade 10 education, it is not surprising to note that this is on a par with the unemployment rate. What is more striking is the fact that Native inmates with relatively high levels of educational completion are still more likely to be unemployed than employed at the time of arrest. The following figure describes the relationship between education and employment, by analyzing 100% of the respondents within each educational level.

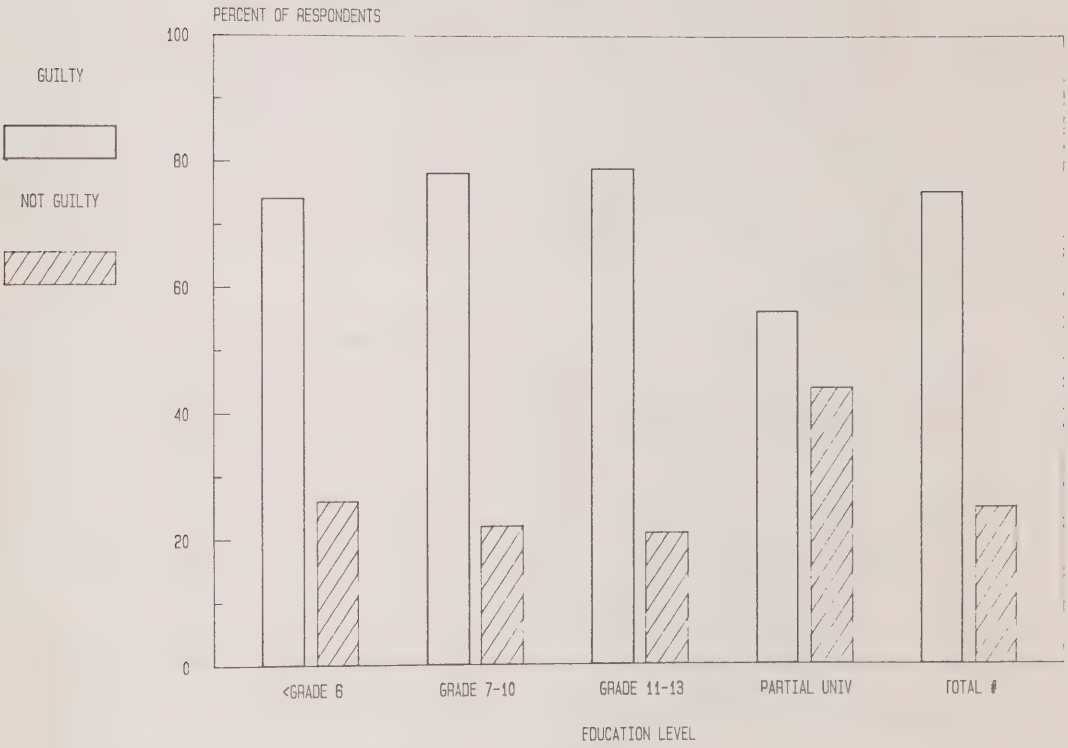
Chart I.1: Education and Employment



Educational differences of respondents in provincial and federal institutions are apparent, in that 63% of the provincial inmates have completed grades 7-10 while only 45% of the federal inmates have. The number of inmates with grades 11-13, however, remains at 24% for both provincial and federal institutions. There is some further difference in respondents who have attained partial university, for example, 17% were federal inmates and only 6% were provincial inmates. Some of this difference may reflect the younger age of provincial inmates with their majority falling in the grades 7-10 range while the federal inmates, because of longer sentences and more opportunity for education, may be better able to obtain university level courses while in prison.

The level of comprehension by inmates of their pleas can be gauged to some degree by the next figure, which demonstrates the level of education with the corresponding plea through analyzing all guilty and not guilty pleas as separate groups.

Chart I.2: Education and Nature of Inmate's Pleas



The general pattern shifts quite dramatically in terms of the respondents who have received partial university as compared to the majority.

Socio-economic factors can, therefore, be seen as contributing to the high incarceration rate as well as to the low level of understanding that the respondents may have of the sentencing process. This data should be kept in mind when considering the results of other questions, particularly as to assessments of legal representation and judicial sentencing.

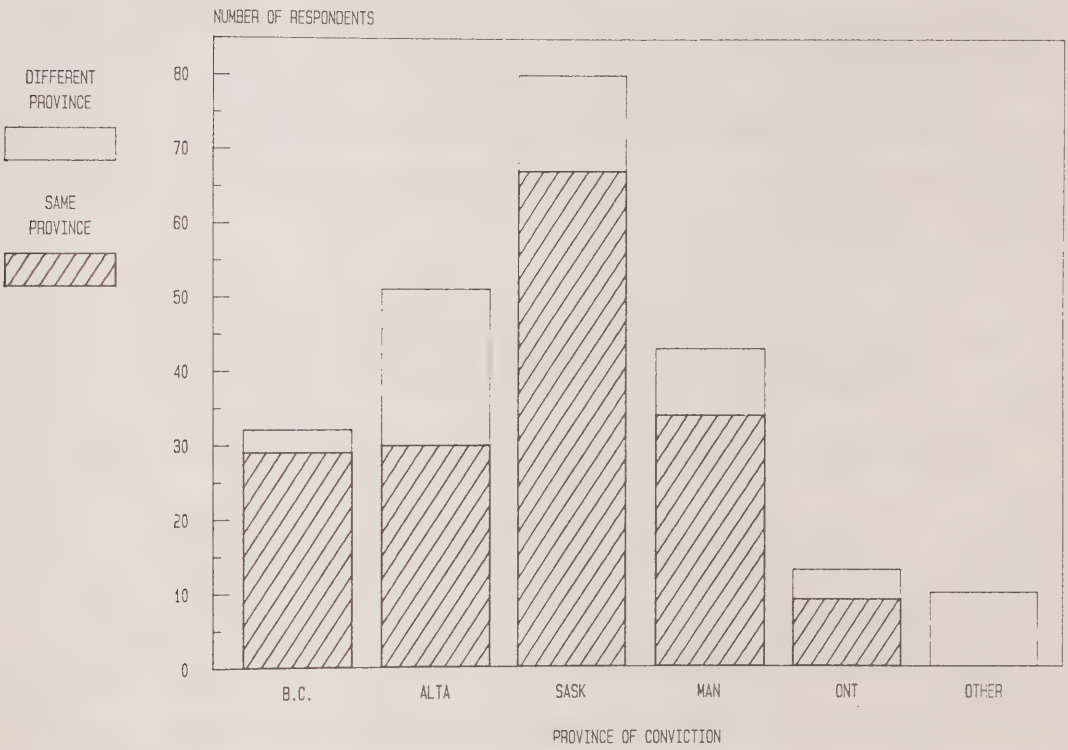
5. Residence Factors

In describing inmate residence backgrounds, it is interesting to note that of the 75% who define themselves as Indian people, only 52% of the respondents said they grew up on a reserve while 48% did not. What this appears to show is a large number of Indian people are leaving the reserve at an early age, are being born away from it or excluded from reserve life by the registration provisions of the Indian Act. It should be noted, however, that of the 59% who are treaty or status Indians, a hefty 88% of these persons were raised on a reserve. At the same time, 19% of the non-status or non-treaty respondents (16% of the total sample) and 10% of the Metis (18% of the total sample) also grew up on reserves. What this seems to demonstrate is that far more Native people who grew up on reserves are involved with the law than those who were raised elsewhere.

Our study indicates that the relationship between educational levels, incarceration and reserve residence is less striking than commonly thought. By far the largest largest number of respondents, 55% and 24%, are found in the grades 7-10 and 11-13 ranges. These figures are similar to McCaskill's statistics, which reveal that the majority of his 1984 sample of Native inmates in federal institutions in Manitoba (78%) were also found in the grades 7-12 range. Furthermore, a 1983 provincial study disclosed a similar trend (89%), but the majority of respondents (62%) were found to be in the grades 10-12 level.[23] Considering that 11% of our respondent group had taken university level work, a similar pattern emerges: Native people appear to be progressing upwards in educational attainment. The significant point here is that growing up on a reserve does not appear to make a dramatic difference to overall educational attainment, however, those with the least amount of schooling are more likely to have been raised on a reserve.

The residence patterns of Native inmates highlights a common problem that was cited in our study: inter-provincial dislocation. A significant proportion of our respondents were incarcerated in different provinces than the province of residence and conviction, as is shown in the following chart.

Chart I.3: Province of Conviction and Incarceration



British Columbia and Ontario have about the same number of people incarcerated there who were convicted elsewhere, which is very low in both cases. Alberta, however, manifests a much greater percentage of respondents coming from other provinces. Part of the reason for this may be that Saskatchewan no longer has a federal institution designed for general population inmates. One should realize that most of the respondents convicted in one province and incarcerated in another are

federal inmates. The chart also demonstrates that a number of respondents are incarcerated away from their home provinces, thus breaking community ties which often ensure successful re-entry into society. Not only does the individual have these ties removed, he/she often has difficulty establishing new ties. For example, Drumheller Institution in Alberta is isolated from major centres as well as from Native communities. A day pass in Drumheller means even more isolation for someone already feeling alienated from society. Further negative results that arise from these transfers (especially if involuntary) include a disruption of any institutional training and educational programs in which the inmate may have been engaged, as well as a highly transient population that can lead to instability and violence, as reported by the Vantour Study Group.[24] This study describes the Correctional Services of Canada as a network organized in a hierarchical fashion

> based on a highly elaborated punishment reward structure that holds out the incentive of minimum-security living conditions in exchange for cooperation with administration.[25]

If an inmate is seen not to be cooperating with the administration, then he/she is either transferred, removed from the general population, or charged so as to lose privileges in the institution. Since cooperation is evaluated on a subjective basis by mainly non-Native personnel, Native inmates are conceivably more vulnerable to the whims of the administration. The Correctional Services of Canada's "cascading" policy, which means transferring inmates to the lowest security level possible, is similarly handled. Native inmates expressed a dissatisfaction with their inability to "cascade" out of maximum and medium institutions to minimum security. The Correctional Services of Canada's punishment-reward system produces a lot of tension amongst inmates from which some retaliate with anger and frustration so as subsequently to lose everything for which they've been working.

Previous residence patterns illustrate that Native people who do grow up on reserves appear to have more conflict with the law; on the other hand, this variable has no significant effect on educational attainment. The high number of respondents incarcerated away from their home province is likely to generate a series of problems for them in particular as a result of this dislocation, namely: breaking family ties; breaking inmate friendships; disrupting an individual's institutional program involvement; creating a sense of isolation; removal from the culture of his/her individual nation; and leading to instability and violence in prison populations. "Involuntary transfers" and "cascading" are both seen by Native offenders as unfairly practiced, which causes additional tension emanating from the punishment-reward system used by the correctional system.

Incarceration History

When considering previous incarceration records, we did not distinguish between previous federal and provincial terms, types of offence or the length of previous sentence(s). A clearer picture of federal/provincial offenders nevertheless emerges.

Table I.3: Percentage of Inmates Previously Incarcerated

	none	1	2	3	4 or more
Male	16.09	19.54	16.09	17.24	31.03
Female	36.36	14.50	21.81	12.73	14.50
Total	20.96	18.34	17.47	16.16	26.07

Only 21% of our respondents had no incarceration record, and over 27% had been in prison more than four or more times. The remaining figures for previous incarcerations indicate a roughly even spread within our respondent group (of which

174 were males and 55 female for this data). The breakdown for men and women indicates considerable differences, with men having a much higher rate of previous incarcerations, while over a third of the women were facing their first prison term.

While not shown here, analysis was done of previous incarcerations taking into account whether the respondent was in a federal or a provincial institution during the survey. One might assume that most of the prior incarcerations of respondents presently in provincial institutions were probably provincial terms as well. Federal inmates are probably mixed in their prior experiences between federal and provincial incarcerations. Those who are incarcerated for the first and second time are not noticeably different between the jurisdictions, however, the third and fourth time inmates are disproportionate in that the federal system has 33% and 35% while the provincial institutions have 68% and 65% respectively. This likely demonstrates the less serious charges and subsequent shorter sentences prevalent in the provincial institutions. Finally, offenders with more than four incarcerations are predominantly in federal penitentiaries at 60% of the total of this group. Somewhat surprisingly, there are more first time offenders in federal institutions than in provincial ones, which is probably a reflection of the serious nature of the offence with which they have been convicted.

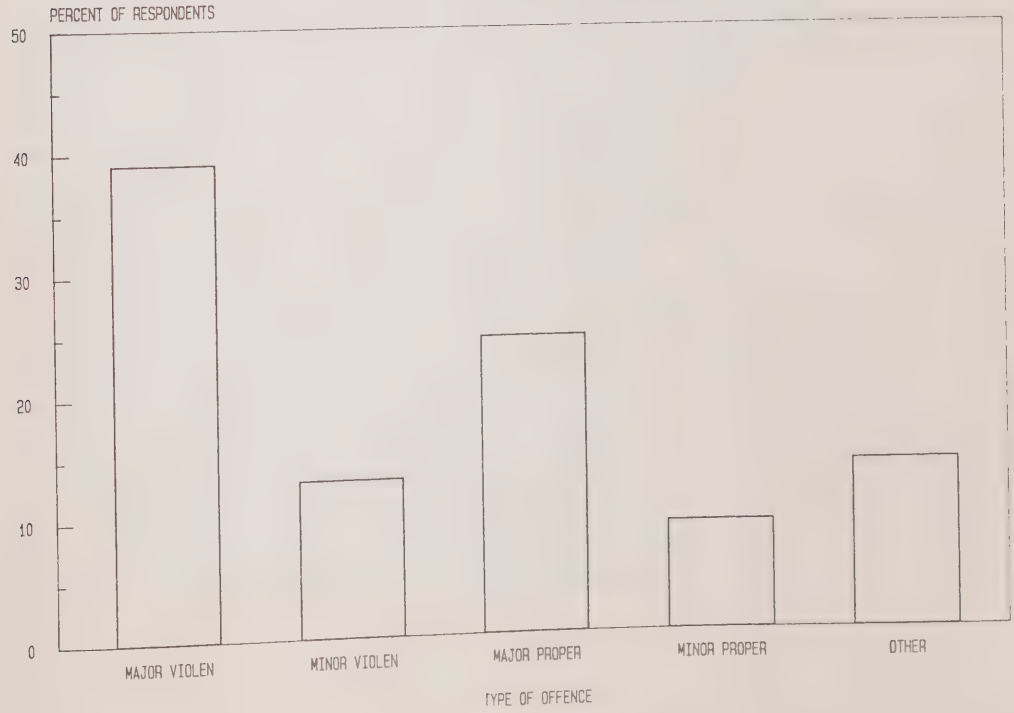
Comparing pleas, the inmate's record demonstrates that the more incarcerations a respondent has, the more likely he is to plead guilty. This is particularly true after a second incarceration, when the guilty pleas rise from 60% to around 80% for those with more than four prison terms. However, guilty pleas for first time incarcerations were also high, over 75%, perhaps indicating a "learning curve" for Native inmates after their first experience with sentencing followed by a return to high guilty pleas. The Solicitor-General's User Report suggests that the recent literature affirms that

Native people often plead guilty because they are intimidated by the court process or they do not understand court procedure.[26]

In some of the institutional discussions, Native inmates said they would often plead guilty to "get it over with". To plead not guilty usually means receiving remand time which is generally not taken into consideration by the court in sentencing if the accused is ultimately convicted. Native offenders alleged that legal aid lawyers encouraged them to plead guilty, while the police will manipulate the Native accused to think that he has no other real choice.

In discussing the nature of the offence, one has to keep in mind that the most serious charge was the one usually selected by the offender to be taken into account for this study. Thus, the sentence reported does not necessarily reflect only one charge and may be a number of sentences added together consecutively. The following chart describes the nature of the offence for which the respondent reported being incarcerated.

Chart I.4: Nature of Offence



Explanation of offences:

major violence	=	murder; attempted murder; manslaughter; rape; other sex crimes; wounding; robbery with violence; assault with a deadly weapon; criminal negligence causing death; armed robbery; kidnapping
minor violence	=	assault; possession of dangerous weapons; offensive weapon
major property	=	theft over; robbery; break and enter; arson
minor property	=	theft under; possession of stolen property; mischief; willful damage;
other	=	mixed minor (property and violence); escapes; intoxicated in a public place; forgery; non-payment of a fine; impaired driving; trafficking or possession of drugs for the purpose of sale; dangerous offender; impersonation.

As the foregoing demonstrates, the largest group (39%) is incarcerated for committing major violent offences while the second largest (25%) is for major property crimes. It appears that the offenders are not involved in minor 'blue collar' crime - they are involved in criminal acts constituting major violence and major property offences.

When considering the types of offences, it is interesting to note Native offenders' opinions of the maximum sentence available for the offence compared with the sentence received. A majority of the federal respondents (31%) obtained sentences of 2-5 years. The provincial respondents are balanced between 1-2 years (25%) and 1-12 months (24%). Since approximately 17% of the total have received 6 years to life/25, and considering the high percentage of major violence and major property offences, it appears that Native offenders as a whole are receiving a lesser sentence than the maximum possible. This is perhaps due to the circumstances surrounding the offences such as the absence of criminal intent and the presence of mitigating factors. The respondents' opinions on the maximum penalty for their convictions reveal a considerable distance between that and the sentence actually

received. For instance, 22% considered a life sentence to be the maximum possible for their offence while only 6% actually were sentenced to life. The next highest, 26%, considered the 6-14 year range to be the maximum and only 8% actually got these sentences. Conversely, 10% considered the 2-5 year range to be the maximum penalty and 31% received those sentences. A further 9% considered the maximum sentence to be one month to two years with 49% receiving a sentence within this range. It appears, therefore, that the Native offenders are generally aware of the maximum sentence they were facing, yet must find it contradictory when these sentences are so far removed from the reality of sentencing practices.

CHAPTER II

NATIVE INMATE VIEWS ON THE JUSTICE SYSTEM

The experience of the judicial system for most of the professionals, analysts and policy makers who contribute to its functioning and development is largely compartmentalized and role-oriented. Their insights and attitudes about change in the system stem from having worked with or for the police, as a lawyer, a judge, a corrections officer, social worker or a parole official or board member. Although judicial policy analysts in government and academia may be less "role-dependent" in their views of the system, theirs is also an abstract approach, less tangibly related to the human experience. There are relatively few "global" specialists in all dimensions of the system, from policing through to release and parole procedures, and of the people who are commonly looked to for input into decisions about the future of the justice system, fewer still have experienced the system from the vantage of the inmate.

Native inmates, as with inmates generally, take a largely biographical rather than role-oriented approach in relaying their experiences. The justice system "happens" to the inmate. The inmate must face and respond to each step of the experience and its different procedures, expectations and personnel. The experience at each stage of the process also partially determines how, or even if, the next stage is to be lived through. The first encounter is with the police, then the legal profession and judiciary, followed by the corrections system and its staff as well as those representing either self-help or community support groups. Finally, the inmate experiences the release procedures and its personnel. The perceptions and attitudes developed by the inmate at each stage of the process naturally influences subsequent

behaviour and, in turn, the response of the system itself. It is this biographical dynamic that is rarely uncovered in most studies of the justice system

This chapter consolidates the survey data in order to assess how Native inmates, as a group and as individuals, view the procedures and personnel they encounter in the justice system. For each step in the process, the respondents were asked about their impressions about the adequacy of the procedures and personnel involved and canvassed on their perceptions of discriminatory treatment. In the analysis that follows, we have attempted to correlate the data so as to assess the interrelationship of experiences at each phase of the system, as well as to compare the perceptions of inmates with socio-demographic and personal history data.

While the results cannot provide the kind of longitudinal analysis that could be derived from a panel-design study, the data nevertheless does give a unique profile of the inmates' step-by-step progression through the system. This is particularly useful in identifying opportunities for change while controlling somewhat for the influence of past experience that might lead to a spill-over of attitudes from previously encountered procedures and personnel. We have attempted, in this fashion, to reflect and comment on the uniquely biographical experience of the inmates and relate this to suggestions in the literature and from inmates about possible change opportunities.

Policing

Discriminatory policing practices are widely recognized in the literature as a significant factor in the overinvolvement of Native people in the criminal justice system. The Solicitor-General's User Report states the following:

> It is clear that the literature tends to support the view that law enforcement personnel hold negative attitudes towards Indigenous peoples and this is reflected in arrest and charge rates ... descriptions of the relationship between Indigenous

> peoples and the police center around "blaming the victim". The argument here is that Indigenous people draw police attention to themselves because of their conspicuous criminality. Indigenous people, rather than police actions, are the object of analysis and no efforts are made to link discrimination to policing practices.[27]

Not unexpectedly, the perception of discriminatory policing against Native people was a source of considerable focus and agitation for many of the respondents. As the following table indicates, 75% of all respondents thought that police treat Native people differently from non-Natives.

Table II.1: Perception of Discriminatory Policing

	Male		Female		Total	
	per cent	number	per cent	number	per cent	number
yes	81.03	141	54.72	29	74.89	170
no	4.60	8	15.09	8	7.05	16
sometimes	3.45	6	9.43	5	4.85	11
don't know	10.92	19	20.75	11	13.22	30
	100.00	174	100.00	53	100.00	227

The subjective comments of the inmates also indicate that a deep rift exists in their mind between the police and Native people. The Solicitor-General's User Report[28] suggests that the overall solution to this problem requires the police to exercise a positive discretion toward Natives. It proposes a three-part strategy, namely (1) cross-cultural education for Natives and non-Natives; (2) public legal education for Aboriginal people; and (3) the "indigenization" of policing through the hiring of more Natives as police officers, special constables, and other roles within the police system.

Some of the literature has followed the "blaming the victim" attitude by referring to the apparent criminality of Native people as drawing the police to them:

> It is also obvious that the Indian people, particularly in cities, tend to draw police attention to themselves, since their dress, personal hygiene, physical characteristics and location in run-down areas make them conspicuous. This undoubtedly results in more frequent arrests.[29]

W.K. Greenaway provides a different perspective by shifting the focus to the police with the following statement:

> to a degree at least, crime and delinquency are 'found' among the poor because that is where they are sought and the poor have little ability to resist intrusion.[30]

Instead of focussing upon Native people as the problem, Dr. Brass, professor of Native Studies at the University of Regina, suggests that police methods should be examined. He states that Indigenous peoples accept the need for policing and always have:

> The problem is therefore not a cross-cultural conceptual disagreement but rather one relating to police attitudes and methods.[31]

The existing literature, although it does not provide up-to-date statistics, essentially supports the view of the respondents in this study that there is a difference in how Natives and non-Natives are treated by the police. The Solicitor-General's User Report, in its evaluation of recent writings on Native people and the criminal justice system, confirms that a disparity exists and suggests that a refocussing of police practices is necessary to resolve this unacceptable situation.

The foregoing suggests a change be made in policing commencing from the level of police recruitment and extending especially to maintenance of the sensitization programs, cross-cultural education, etc. This is a difficult area indeed when one

considers the historic governmental desire to assimilate Native people into the mainstream and its reluctance to perceive Native people as a distinct group entitled to special treatment. This difficulty is particularly apparent in the criminal justice system as it conflicts with European values favouring a unified system administering the same criminal law for all through officials selected without regard to racial or cultural factors.

Legal Representation and the Plea Bargaining Process

When considering opportunities for change and improvement, it is tempting to single out legal representation for major attention. This, after all, is the major stage at which the Native person in conflict with the law has an opportunity to have his or her circumstances, personal history and status as a Native person recognized and asserted professionally. It affords the opportunity to address any policing disparities, especially now in the context of Charter-based equality guarantees. It opens up the possibility for ensuring that legal counsel are sympathetic with and knowledgeable about Native people and their unique status.

With charge and sentence bargaining, further opportunities are present for the defense and prosecution lawyers, as well as the judiciary, police and court workers to reflect the distinctiveness of Native offenders. Indeed, given the very high levels of guilty pleas amongst Native accused, the charge and sentence bargaining process affords something of a litmus test for the sensitivity to Native realities within the legal community.

Despite its importance and potential, the data which follows indicates that this phase of the judicial process is largely underutilized as a potential area for constructive intervention. Native offenders are generally critical of the legal representation system (i.e., legal aid) and are often critical of their counsel. Yet they

do not readily associate their sentencing with failings in their legal representation, even when sentences are perceived as excessive. As noted below, this may be accounted for by rather low levels of sentence, as opposed to charge, bargaining. In terms of the plea bargaining process as a whole, it is clear that Native offenders have a limited understanding of either its purpose or opportunities. While educational factors are certainly relevant here, cultural ones cannot be underestimated, especially since the adversarial rules of engagement in the criminal justice system are often foreign to Native perceptions of justice.

1. Legal Counsel

The role of legal counsel was considered to be another major concern for the respondents. Out of 215 respondents, 41% stated they were satisfied with their legal representation and 48% were not. A further 5% of Native inmates reported that they were satisfied with their legal counsel some of the time while 6% could not decide how they felt about their lawyers. In regard to the question of lawyer's ethnicity, 96% said they did not have Native counsel while only 3% said they had. Only one respondent reported not knowing if the lawyer was Native or not.

In group discussions in the various institutions, the following perceptions and concerns relating to legal counsel were specifically raised:

(i) legal aid is overworked so lawyers tell 75-90% of accused to plead guilty;

(ii) lawyers don't know how to "fight right" and lose anyway;

(iii) there is no real choice in who you get to act as your lawyer;

(iv) more than one lawyer may represent you through your case causing inconsistencies and confusion for the accused and the court, e.g., one

lawyer goes to court for the trial or plea and another one does the final summation to sentence;

(v) people need some legal knowledge before even being able to communicate with lawyers; lawyers are sometimes patronizing and don't try to explain things to the Native accused;

(vi) lawyers sometimes make promises that they don't follow through on;

(vii) legal aid lawyers don't invest time with the accused and often don't see them in custody until five minutes before appearing in court;

(viii) when lawyers see the accused they don't listen to them but just do what they want to do regardless of the wishes of the accused.

The Solicitor-General's User Report affirms the inadequacy of legal representation to Native people in its recent literature review.[32] It suggests that Native lawyers are more apt to communicate with Native accused and thus be better able to serve their needs and interests in criminal matters.[33] A significant increase in the number of Native lawyers might lessen the incarceration rates of Native people. At the very least, it would be likely to provide Native insights to the courts while ensuring that Native accused had a better understanding of the criminal justice system.

2. Plea Bargaining

The survey was directed toward learning whether or not people understood the process of negotiating between the Crown and the defendant (or his/her lawyer) on the number and severity of charges and/or the Crown's recommendation concerning the appropriate sentence in the circumstances, a process encapsulated by the common label of "plea bargaining". Further questions concerned who was involved in the bargaining, whether the individual had legal counsel, if anyone explained what was

occurring and what the opinions of Native offenders were about the plea bargaining process.

This subject was one of particular difficulty as it was not understood by a significant number of respondents. Considering that 230 people completed the questionnaire and 201 answered the charge bargaining question, none of the other inquiries (concerning sentence bargaining, comprehension of the process and legal representation) were answered by more than 31% of the respondents. It should be noted, however, that 43% of those persons having entered a guilty plea responded to the full range of questions. This limited response rate occurred even though the basic, lead-in questions to the subject contained response options to reflect a lack of understanding of the subject by the respondent at the time the plea bargaining occurred, the questionnaire contained a brief description of plea bargaining and the interviewer explained this subject orally.

This low response level should clearly be considered in reviewing the data contained herein and in Appendix 2. Therefore, we believe that the "don't know" responses in the following three tables on understanding the plea bargaining process, charge bargaining and sentence bargaining do not reflect the true lack of information and comprehension about this essential aspect of the sentencing process.

Table II.2: Understand Plea Bargaining Process

	Male		Female		Total	
	per cent	number	per cent	number	per cent	number
yes	72.22	39	57.14	8	69.12	47
no	25.93	14	42.86	6	29.41	20
don't know	1.85	1	0.00	0	1.47	1
	100.00	54	100.00	14	100.00	68

As the next table indicates, only a few of the respondents to this question did not know if charge bargaining had occurred, while over 61% said it did not. The responses from men and women do not indicate a significant difference in their experience or knowledge.

Table II.3: Charge Bargaining

	Male		Female		Total	
	per cent	number	per cent	number	per cent	number
yes	37.58	56	30.77	16	35.82	72
no	60.40	90	63.46	33	61.19	123
do not know	2.01	3	5.77	3	2.99	6
	100.00	149	100.00	52	100.00	201

The following table does, however, indicate a significant difference in circumstances based on sex as only 11% of men did not have the benefit of negotiations on sentence while 36% of women were in the same situation.

Table II.4: Sentence Bargaining

	Male		Female		Total	
	per cent	number	per cent	number	per cent	number
yes	86.79	46	64.29	9	82.09	55
no	11.32	6	35.71	5	16.42	11
don't know	1.89	1	0.00	0	1.49	1
	100.00	53	100.00	14	100.00	67

Almost 95% of the respondents had legal representation for plea bargaining. It is, therefore, not surprising to find that the defence lawyer was the most common

person to explain the process (58%). Nevertheless, 25% of the respondents disclosed that no one explained the process. What could be viewed as disturbing is that the judge was the source of this information in only one case and the Crown in two cases. It does appear from this that the court and the prosecutor may not consistently be ensuring that the accused is aware of the effects involved in plea bargaining.

The responses do demonstrate, however, that Native offenders regard the system of plea bargaining as favourable. Only 15% were not satisfied with the outcome in their particular case. Some 69% of respondents thought the system was acceptable. It should be noted, however, that 20% held a negative opinion.

The Judiciary and Sentencing

One of the key areas examined in this component of the study is the seemingly limitless discretion of the judiciary in their sentencing practices. The Solicitor General's User Report is apt in its summation:

> Very little is known about the rationales behind discretionary decisions of judges. Judges, through their choices of dispositions and sentences, after all, effectively control prison intakes and hence the extent of over-involvement.[34]

In light of this comment, the question arises whether the over-involvement of Native people is a result of differential sentencing of Native people by the judiciary. Offenders' responses may provide some insights into this mystery, although other factors are influential in determining appropriate sentences, including the following:

> Sentencing can be perceived as a separate process influenced by lawyers for the crown, defence, availability and quality of community resources, and by probation officer's assessments and recommendations on such sensitive matters as personal "problems", community supports, question of stability and "risk" to communities.[35]

Native offenders seldom have adequate social support systems and community resources; thus, they are unable to present constructive plans to the court. It follows, then, that an unfavourable socio-economic profile increases the likelihood of incarceration rather than probation and non-custodial sentences.

1. Judiciary

As mentioned earlier, the judge naturally has great influence in the sentencing process. An Ottawa newspaper, The Citizen, defines sentencing to be:

> ... the extremity of the criminal law. It is the point at which a judge, with all the coercive force of the state, delivers punishment upon the convicted criminal.[36]

The article further cites the opinion of Mr. Justice Allen Linden, President of the Law Reform Commission of Canada, regarding the sentencing system as outdated, complex, inconsistent and often unfair. He suggests that the absence of realistic guidelines leads to erratic sentencing:

> Sentencing also rests too much on the personal penal philosophies of individual judges. Some ... favor lighter sentences for people with jobs than for those without work - a discrimination against the unemployed.[37]

When examining the association between sentencing and employment for the purpose of this study, this comment appears to hold true to form regarding the employment status of the respondents. Only 36% of respondents classified themselves as employed, leaving 63% of the respondents as unemployed prior to incarceration. It is important to note that these figures, while high in terms of non-Native figures, are not at variance with general Native employment data. Consequently, it is difficult to link the levels of unemployment of inmates with any presumption that unemployment,

on its own, is the significant contributing factor to criminality for Native people. Yet, this association does seem to be a potent one for judicial personnel in determining sentencing.

At the same time, it is more important to allow judges some flexibility in sentencing so as to fit the punishment to the particular facts of a case rather than restricting them to a rigid, defined penalty system. Linden J. constructively suggests an alternative to the present system as the:

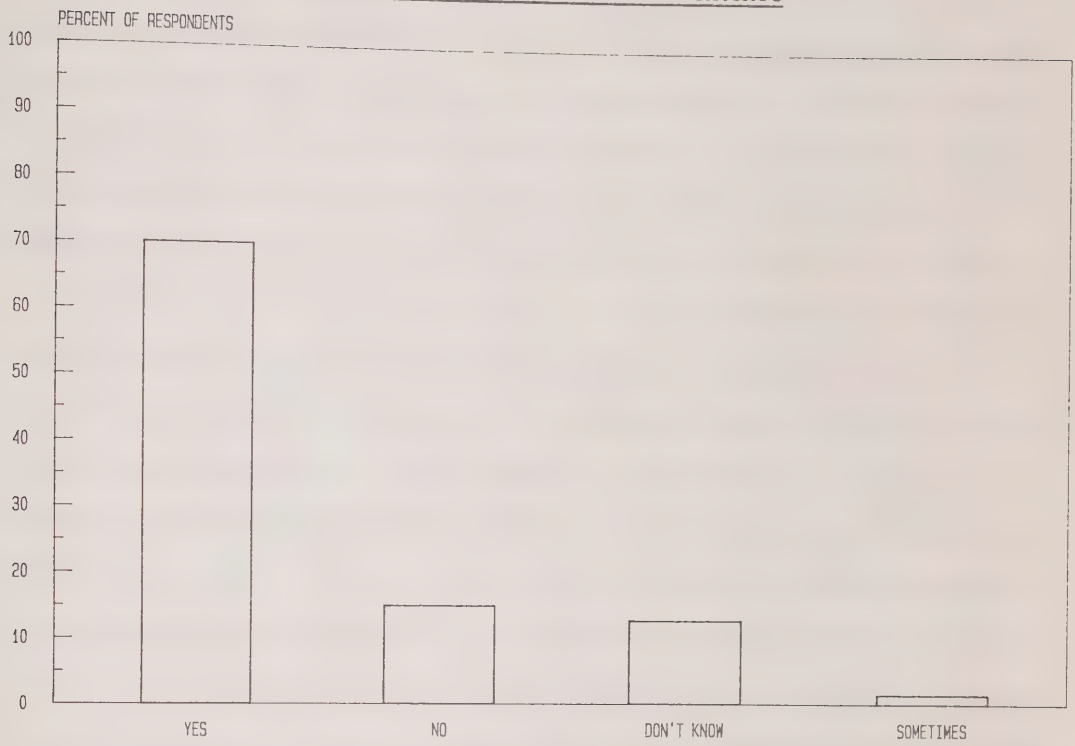
> establishment of a permanent body to set "benchmark" sentences for the "normal case" to give better guidance than the Criminal Code maximums. Judges would then be free to deviate from the benchmark by, say, 10 or 15 per cent to cope with specific cases.[38]

An example he used was the modification of the maximum life sentence for executing a break and enter to a more realistic or normally used term of two years. Mr. Justice Linden's proposal and the following comment by the Ottawa Citizen reporter have great merit in the views of the authors.

> Sentencing is law at its harshest; it is the deprivation of freedom. It must be irreproachably just - or as close as we can make it. The present system falls far short.[39]

If this appears to be the state of sentencing generally, it can be easily imagined as being worse for a conspicuous group such as Native people. Native offender responses, both objective and subjective, demonstrate a dissatisfaction and unease with the performance of the judiciary. The response from one question in the survey illustrates the uncertainty and inconsistency apparent in the sentencing process, namely: do you think that you would have received a different sentence if you had been sentenced by a different judge? The following figure shows these responses. .

Chart II.1: Judge's Influence on Sentence



Different sentence if different judge

The high percentage of Native offenders affirming the likelihood of different sentences being delivered by different judges illustrates their personal insecurity with the sentencing process. It exemplifies the apparent contradictions in a supposedly rational and fair system in the opinion of Native offenders.

The responses of Native discussion groups provide further insights into the system as they perceive it. For example, a southern Alberta inmate group, along with credible members of correctional staff (parole officer, liaison officer, et al.) alleged that a local judge maintained a personal 'blacklist' of offenders who appear before him. If a repeat offender appears before the judge or is related to another 'blacklisted'

offender, then they should anticipate the worst in terms of possible sentence. Also, the same judge has been residing in the area of mainly small communities, for eighteen years. He is said to have thereby lost his impartiality toward judging community members. Another question put forward by these groups directed at the Canadian Sentencing Commission itself (as sponsor of the research study) was how could it be a credible and impartial examiner of courts and judges when most of the Commission's members are themselves judges.

A British Columbia discussion group expressed a concern with the broad, individual power of judges in sentencing. It was suggested, for example, that if a judge is having a bad day personally, then he is more likely to give a longer sentence than a judge who is having a good day. A Saskatchewan group observed that each judge is individualistic and seems to have his/her own criteria for sentencing. Another Saskatchewan group felt that judges had too much leeway with their vast discretionary powers, a discretion thought to lead to disparity and inconsistency of sentences, often as a result of the judge's mood. These assertions are in keeping with Mr. Justice Linden's earlier remarks regarding the sentencing system as inconsistent and often unfair.

In the response to the question as to whether the judge was fair or not, 49% said no and 38% said yes. The remaining 12% said they didn't know if the judge was fair or not and 1% said sometimes the judge was fair. The range between the yes and no responses (11%) seems to demonstrate, despite the foregoing comments, that judges are not personally being seen as totally to blame for the deficiencies in the system.

As far as the judge explaining the sentence, 68% reported that he/she did so and only 25% said the judge did not. Under 7% did not know if the judge explained the sentence or stated that the judge sometimes did. Again, it seems that the individual judge is seen in a more favourable light than the judiciary as a whole, perhaps because

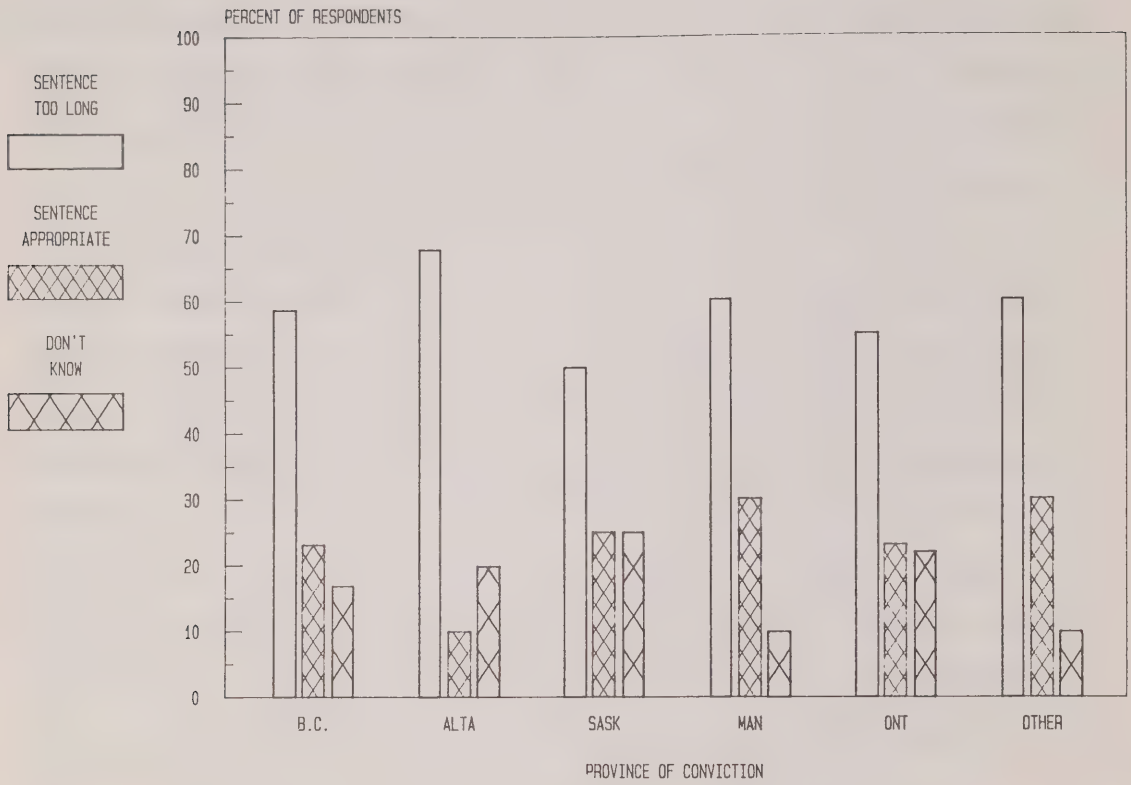
he or she is seen as someone who attempts to explain things to the accused. The subjective comments describing why the judge wasn't fair, however, are far less kind. There are approximately 148 comments relating to judges as to unjust sentencing; prejudice; lack of impartiality; not taking all factors into consideration; improper actions in court; unfair reliance on the record; inconsistent sentencing; etc. These comments receive greater elaboration in Appendix 2.

In summary, the judiciary is perceived to be a powerful yet erratic force within the sentencing process. The Native offenders appear ambivalent about them when their responses are considered as a whole. Judges are seen as all-powerful and righteous, yet cranky and mean-spirited. Neither description seems fitting for a judge. We would suggest that Mr. Justice Linden's alternative be considered carefully as change has to occur in order to maintain a belief in and support for the justice system. If the general population is being treated unjustly in the present system, it is not difficult to imagine that Native people will believe they are being treated much worse, especially when considering the lack of cross-cultural knowledge between Native people and the overwhelming non-Native majority of justice system personnel.

2. Sentencing Attitudes

A majority of the respondents, throughout the various provinces, stated that their personal sentences were too long. Alberta, the province which dispensed the longest sentences, was actually responsible for 31% of the life sentences and 56% of the sentences ranging from 6-25 years. British Columbia was the next highest with sentences including 23% of the life sentences and 34% of sentences between 6-25 years. Ontario had 15% of the life sentences and 4% of the 6-25 year sentences. The following figure demonstrates the correlation between the province of conviction and the respondent's personal opinion of his/her sentence.

Chart II.2: Province of Conviction and Severity of Sentence



We have correlated responses on severity of sentencing with the type of offence received in order either to sustain the respondents' opinions or to reveal inconsistencies, if any. Saskatchewan, for example, demonstrated the lowest percentage on sentence length in the foregoing chart. Conversely, only 21% of the sentences ranged between 6 years to life. The majority of sentences (52%) were contained within the 1-2 year range, while 25% had sentences of 2-5 years. Saskatchewan also has the majority of the 1-12 month sentences. Considering that Saskatchewan's offences contained 27% of the major violence and 31% of the major

property charges along with a high 40% of the "other" offences, the sentences are suprisingly much lower than elsewhere. For example, 24 inmates committed offences involving major violence in Saskatchewan and the sample discloses 23 inmates who received sentences of two years or more; however, in Alberta, 24 committed offences of major violence but 29 inmates had received sentences of two years or more. These provinces, Alberta and Saskatchewan, demonstrate how sentencing practices can be dependent on geographic location and how subsequent variation in sentencing practices leads to disparities and contradictions in a justice system.

A further cross-check of views on the severity of sentencing was done by comparing inmate views of their own sentences with their perception of sentencing severity in general. More respondents (56%) thought their sentences were too long than felt that sentencing was too severe for everyone in general (41%). Differences between men and women were not generally significant except with regard to those who felt that personal sentences were too severe (with men at about 60% compared to women at 46%) and in terms of "don't know" responses regarding the severity of personal sentences (men at 15% and women at 31%).

About 50% of the respondents who thought sentences were about right in general thought their own sentences were about right as well. On the other hand, about half of the respondents who thought sentences were not severe enough in general thought their own sentences were too long. Thus, most, but not all, respondents are consistent in that if they thought their sentence was too long, they generally think the severity of sentences overall was also too extreme. Furthermore, if personal sentences were not seen as inconsistent, respondents nevertheless thought that 'inherent' inconsistencies in sentencing would ensure a high percentage of "too long" sentences. A majority of respondents who did not know about sentences generally thought their own sentences were too long nonetheless.

In further determining the consistency of views on sentencing, views on the judge's fairness were correlated with the perceptions that there would be another sentence if a different judge determined it. The results reveal that the largest group of respondents (37%) felt the judge was unfair in his sentencing and that the sentence would have been different with a different judge. Even of the 38% of all respondents who considered the judge to be fair, over 70% thought there would be a different sentence with another judge. These opinions reflect an apprehension of sentencing by respondents who do not know what to expect from the sentencing process even when they think the judge is fair.

In analyzing sentencing disparity, it was found that 54% of the respondents thought that Natives get harsher sentences than non-Natives and 16% get the same sentences. A further 23% did not know if there was any disparity while 4% thought it could be harsher, more lenient or the same because of inherent inconsistencies in the system. A final 2% thought that Natives get more lenient treatment than non-Natives. The table below also indicates greater uncertainty among females than males.

Table II.5: Sentencing Disparity

	Male		Female		Total	
	per cent	number	per cent	number	per cent	number
harsher	59.88	100	37.25	19	54.34	119
more lenient	1.80	3	3.92	2	2.28	5
same	14.97	25	21.57	11	16.44	36
combination of above	4.79	8	0.00	0	3.65	8
don't know	18.56	31	39.22	20	23.29	51
	100.00	167	100.00	51	100.00	219

3. Understanding of Sentence

As discussed briefly in Chapter I, the Native inmates surveyed (64% of whom were incarcerated for major property or violent offences) generally seem to receive lesser sentences than the maximum possible. The inmates tended to have a fairly clear understanding of the possible sentences for their offences, but discrepancies in actual sentencing were cited as a potential area of confusion about the fairness of the system as a whole and the criteria by which the judiciary exercise discretion in sentencing. In order to determine the inmates' understanding of their sentence somewhat more clearly, it is useful to examine the connection between plea responses and understanding of the sentence received.

Somewhat surprisingly, there did not appear to be a significant difference in comprehension between those who pled guilty and those who pled not guilty. Thirty-two per cent of the respondents did not understand the sentence they received or the hearing process and about 73% of this group pled guilty. Of the 65% of respondents who did feel they understood their sentence, around the same number, three-quarters, had pled guilty.

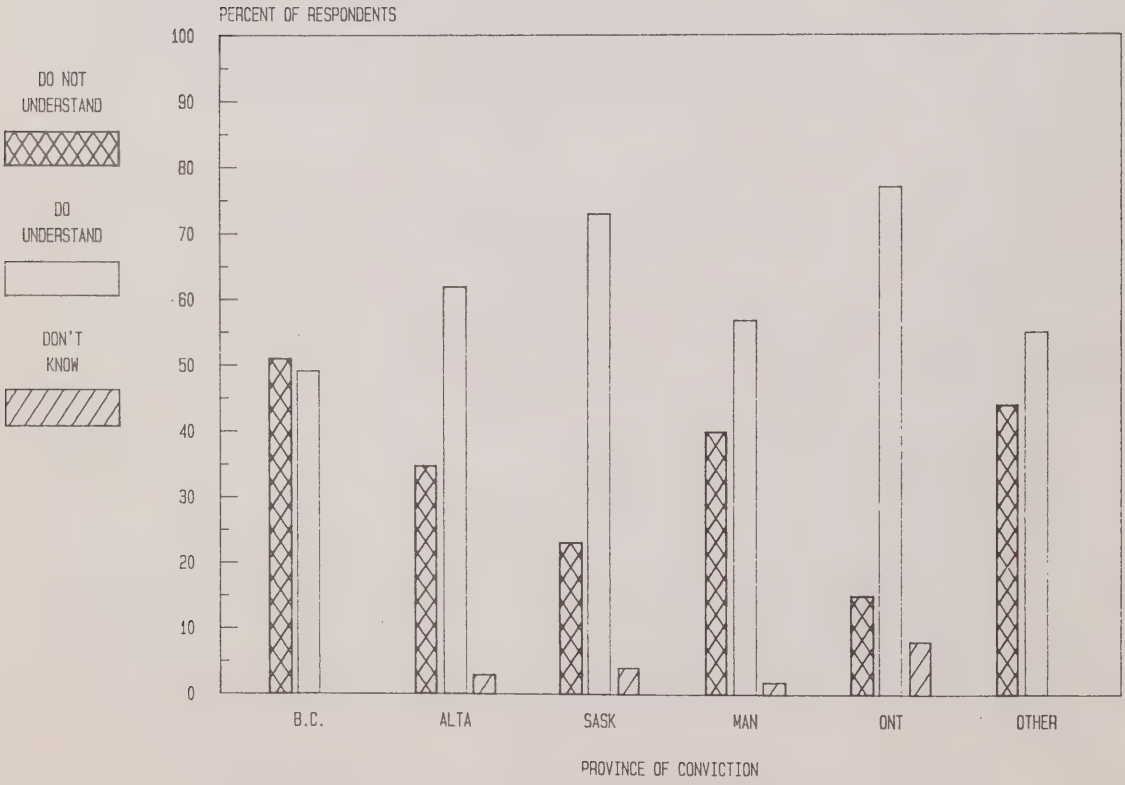
This apparent consistency would, on its own, tend to support the view that comprehension of the judicial system, at least as represented by sentencing, was not a key factor in the nature of pleas. This is somewhat counter-intuitive since one would expect at least some association between these two factors amongst any group of inmates and a rather higher level of guilty pleas to be associated with lack of comprehension amongst a poorly educated group, especially one characterized by significantly higher guilty pleas than the norm. Indeed, the subjective responses (reported at Appendix 2) showed that inmates did have problems with understanding general and specific areas of the judicial process, with the jargon, procedures and substantive laws involved. In this regard, it should be noted that despite the face-to-

face nature of the interviews, the question on sentence comprehension could have been construed in a number of ways, such as to refer to the conviction itself, the process of sentencing or to the fact that different sentences could apply to the same offence.

Following this matter further, it is useful to examine possible correlations between sentence comprehension and other factors that may lend themselves to policy or program improvement, such as differing sentencing practices and personnel across provinces and who explained the sentencing process or the sentence itself.

Given variable provincial systems of criminal justice administration, it is not surprising that the survey did reveal some variation in comprehension across provinces, as shown in the following chart.

Chart II.3: Province of Conviction and Understanding of Sentence



Rates of understanding seem to rise in a clear progression eastwards from British Columbia, the only province for which the rate was less than 50%. Manitoba appears as the only exception to this trend, with a 55% rate of sentence comprehension. Sentence understanding for the few (11) inmates convicted in other jurisdictions under the "Other" category, shows a level comparable to Manitoba. Note should also be made of the fact that Ontario's high reported level of understanding may be more an artifact of the low number of respondents involved who reported convictions there (13) than representative of greater comprehension.

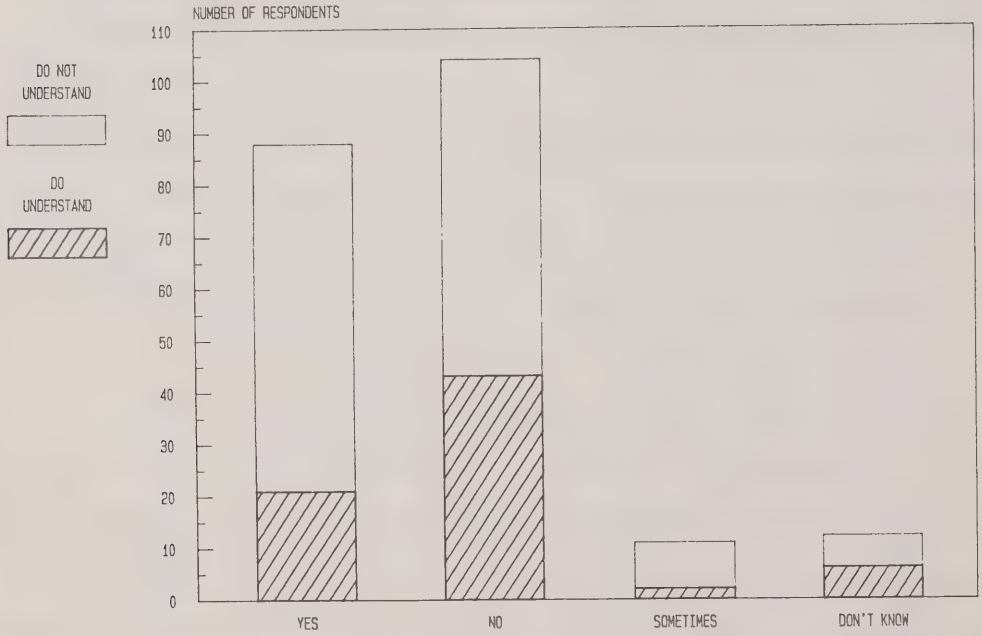
The next area addressed is the link between comprehension and the personnel involved in explaining the sentencing process to the inmates. Overall, comprehension levels appeared to remain relatively high and relatively stable no matter who explained sentencing: judges, the police, defense lawyers, other inmates or courtworkers. It should be realized that few respondents reported courtworkers as being involved in explaining sentencing while in 25% of the cases no one was reported as having explained the process or the sentence received. Only in the latter group was there a majority (55%) of inmates reporting a lack of understanding, whereas in the other cases, especially those involving the judiciary and legal counsel, rates of understanding were at about 70%.

Judges and defence lawyers are the two authorities most frequently cited as having primary importance to inmates in the sentencing process and, as could be expected, are most often cited as having explained the process itself as well as the sentence received. Interestingly, we found no major difference in understanding between those who did report the judge had given reasons for the sentence and those who stated the judge had given no reasons or explanation for the sentence. Just under 70% of the respondents reported that the judge had given reasons for the sentence imposed, while approximately one quarter indicated that no explanation was received

from the bench. There was a slighly higher level of understanding for those who received such an explanation (70%), but a full 60% of those who did not get an explanation also reported having no difficulty understanding their sentence or the sentencing process. It should be noted that "don't know" responses accounted for a very low percentage of respondents in this case. As in the case of the correlation between understanding and pleas, there appears to be a puzzling lack of connection between inmate comprehension and the role or actions of judges.

The final area of focus is on the link between comprehension and the inmates' sense of satisfaction that their legal counsel had adequately represented them, as illustrated in the next chart.

Chart II.4: Sentence Understanding and Satisfaction with Legal Counsel



Satisfied with Legal Counsel

The level of dissatisfaction with legal counsel was fairly high and there did seem to be a moderate relationship between satisfaction with counsel and comprehension. A

noticeably lower degree of understanding was associated with dissatisfaction with counsel.

It is interesting then to note that of the three factors addressed — pleas, judge's explanation and legal representation -- it is legal representation that seems to have the only marked correlation with comprehension of the sentence received. The explanation for this is not clear. It could relate to lawyers being seen as having a role-conflict as both officers of the court and advocates for the accused, a conflict which may increase levels of general confusion amongst Native accused, especially for those whose lawyers are non-Native, who are relatively unknown to them or, as in the case in some northern locations, are professionally and personally indistinguishable from either judges or prosecution lawyers. In this regard it should be noted that the respondents' assessment of the fairness of judges (48% reporting unfairness and 38% reporting fairness), was similar to the degree of dissatisfaction indicated with lawyers. The correlation between understanding and satisfaction with counsel might also be a function of respondents generally wishing to manifest competence in understanding their situation coupled with a willingness to blame either themselves or their legal 'alter-ego', their defence counsel, for the sentence received. Alternatively, the lawyer may be seen as being the closest, most available, and therefore most "blamable" person involved in any lack of comprehension about the sentencing process. This could be a particularly likely rationale if explaining the process is perceived by inmates as being a central component of the lawyer's function.

Disparities in Institutional Treatment

Prisons, although separate institutions from the court process, are similar in that they too are affected by a number of individuals holding discretionary powers over offenders. The key issue discussed in this area of the judicial process was whether

conventional prison programs, formulated for and managed by non-Native people, are appropriate for Aboriginal offenders. Some persistent recommendations for change that emerged from the survey include the sensitizing of non-Native staff, recruiting Indian, Inuit and Metis people to work within the system (as guards, classification officers, etc.) and developing Native orientated and Native operated programs.

The high rate of affirmative responses to the question on perceived disparity of treatment by institutional staff is not surprising if one accepts that whatever takes place in prisons is but a microcosm of what is occurring in the broader society. If racism exists in one, it is likely to exist in the other. The prison setting is a self-contained community with a code of its own. A journalist described this system as an essentially "dehumanizing process"[40] for any inmate. If this is magnified along with cultural, social and spiritual isolation, then a picture of the Native experience within correctional facilities emerges.

Part of the institutional role is to improve the station of the inmate so that he/she is more likely to succeed on the outside. This objective is pursued in the form of programs involving education, training, life skills and self-help groups such as Alcoholics Anonymous, Narcotics Anonymous and cultural awareness groups (Brother/Sisterhood, French club, etc.). In all correctional institutions, however, the policies continue to be made by non-Natives for non-Natives. Management is for the most part non-Native; classification officers are non-Native; living unit officers and security staff are all non-Native. In addition, most of the non-Native staff are unaware of and possibly unsympathetic toward Native culture. These factors all contribute toward polarization between Native inmates and non-Natives in the institutions.

1. Staff Treatment

The following table demonstrates the respondents' opinions of the different treatment of Natives and non-Natives by institutional staff.

Table II.6: Perceived Racial Disparity in Institutional Treatment

	Male		Female		Total	
	per cent	number	per cent	number	per cent	number
yes	60.34	105	37.5	15	56.07	120
no	16.66	29	37.5	15	20.56	44
sometimes	11.49	20	7.5	3	10.75	23
don't know	11.49	20	17.5	7	12.62	27
	100.00	174	100.00	40	100.00	214

Quite clearly, male inmates have a much higher and more definite sense of disparity in prison treatment, no doubt reflecting a wider range and history in their prison experiences and the greater entrenchment of disparate treatment practices in male-dominated systems. The "don't know" responses to the question of treatment disparity may partly be accounted for by the number of first timers canvassed in the survey. For example, 26% of the respondents experiencing prison for the first time said they did not know if there was prison staff disparity and 24% said they did not perceive any. On the other hand, 45% said there was disparity. It appears that the more times a respondent has been incarcerated, the more clearly he may see this disparity. In a correlation of these two variables, a general positive trend was found, rising from 45% for first timers to about 60% for those serving their third, fourth or more sentences. Negative responses were more erratic, although keeping within a range between 15%

to 27%. Respondents who thought there were prison staff disparities on an occasional basis were consistent, ranging from 5% (first timers) to 14% who were serving their fourth prison term.

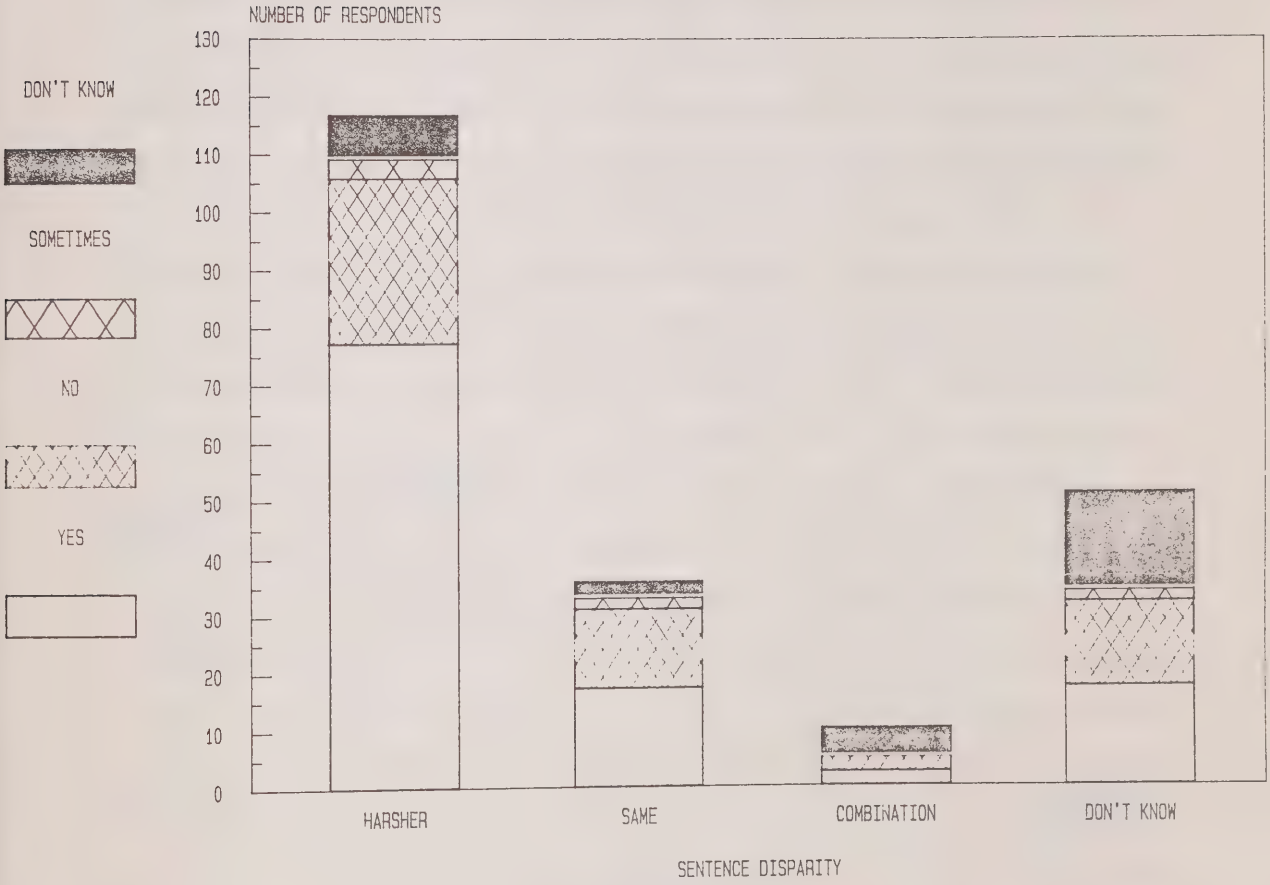
The subjective responses [see Appendix 2] relating to how prison staff treat Natives and non-Natives differently contain 251 comments of which 61% perceived staff to be prejudiced toward Aboriginal people. A further 29% perceived prison staff as actively playing "head games" with Native inmates, having preferential leanings toward non-Natives, and abusing their power as staff. Religious persecution was seen as another problem area emanating from prison employees. A further 10% of the respondents considered racial disparity in treatment a two-way street where prejudice depended on the individuals concerned, whether Native or not. They stated that progress was being made by some staff who were becoming more aware of Native issues and were attempting to overcome negative stereotyping. These results appear to reflect the polarization that exists between Native people and non-Natives. This latter group who felt that progress was occurring will hopefully increase in the future as more cross-cultural, legal education and general awareness programs are developed for both Natives and non-Natives within correctional facilities. As these programs become implemented more widely in staff training and recruitment, and as the changes become apparent in the policy-making area of corrections, the strong negative assessment expressed by the respondents should decrease.

2. Inmate Friction

Another arena for disparities in institutional treatment concerns inmate relations. Real or perceived sentencing disparities -- of particular concern in this study — are clearly related to heightened perceptions of friction amongst inmates, as

the following chart illustrates. Moreover, the non-Native inmates are likely in their attitudes and behaviour indirectly to reflect differential treatment by staff.

Chart II.5: Sentencing Disparity and Native Inmate Friction



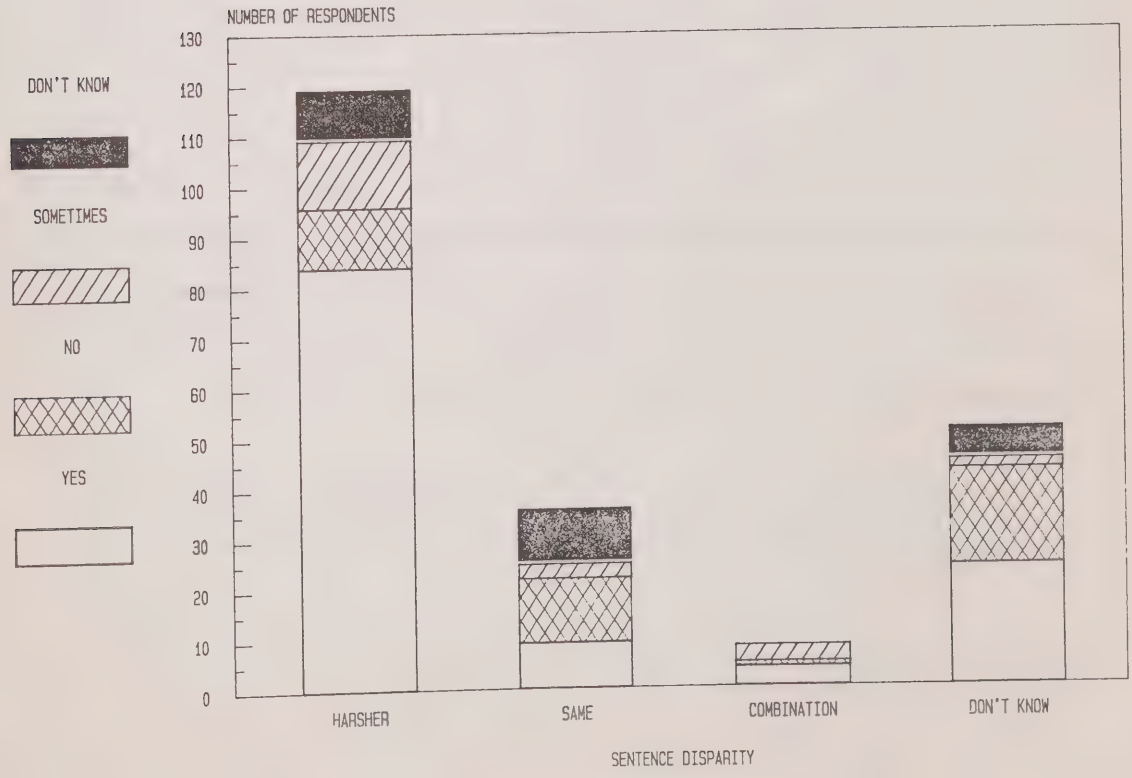
Of the respondents who indicated that Native people do receive harsher sentences, over 65% indicated that there was friction caused by this sentencing disparity. Only a quarter of this group said there was no inmate friction and a minor percentage did not know or thought there was friction among inmates on an occasional basis. Even among respondents who indicated that Native people get the same sentences as non-Natives, almost half thought that there was inmate friction. The foregoing demonstrates that where there is a perception that sentencing disparity (harsher or more lenient) exists among inmates, whether Native or non-Native, then it seems to create a belief that friction exists among the inmates themselves. Thus, the disparities and inconsistencies in sentencing not only effect the individuals in the court process, they also aggravate prison relationships.

Further evidence of the connection between disparities in the sentencing process and correctional treatment can be derived from an analysis of the link between the respondent's opinion of his/her own sentence and whether he/she thinks that sentencing disparity causes friction among Natives and non-Natives. About one-half of the respondents who considered their sentences too long also considered inmate friction a consequence of sentencing disparity. Thirty-three per cent stated there was no friction while the rest of the respondents did not know or thought it caused friction only occasionally. The predominance of this correlation is further confirmation of how sentencing practices may affect prison life. We suggest that this data provides evidence of a significant linkage and indicates that anything that occurs in the larger system (i.e., the sentencing process) influences the activities in the other (i.e., the penal institution).

A further determinant that may be inferred from the next chart is the relationship between disparity in sentencing and whether prison staff treat Natives and non-Natives differently. Of the majority who state that Aboriginal people receive

harsher sentences, over two-thirds indicate prison staff treat them and non-Natives differently. Of those respondents who do not know if there is sentencing disparity, approximately 45% indicated there is prison staff disparity and less than 40% stated that there is not. Thus, it appears that there is a correlation between perceptions of disparity of sentencing and perceptions of how prison staff treat Natives and non-Natives. It could be that where there is a perceived difference in sentencing of Natives and non-Natives by prison staff, whether favourable for one or the other, it may be seen as unfair and lead to institutional staff patterning their treatment of Native inmates accordingly. It is suggested that prison staff consciously or unconsciously embrace the attitudes which contribute to sentencing disparities and manifest them in their treatment of the Native inmates.

Chart II.6: Sentencing and Staff Treatment Disparity



The foregoing opinion evidence on sentencing and institutional treatment presents a clear recognition of disparity in treatment commencing from the differences in geographic locations (i.e., provinces); the correlation between general severity of sentences and personal opinion of sentences; the relationship between judicial fairness and differences of sentencing among judges; the suggestion of a possible correlation between sentencing disparity and prison staff's treatment of Natives and non-Natives; and the connection between sentencing disparities and friction between Native and non-Native inmates. It seems clear from the data that all of the factors mentioned are interrelated. Furthermore, disparities and inconsistencies in sentencing practices negatively affect Native and non-Native relationships not only in the court system but in the institutional structure as well. This will, presumably, affect the attitudes of Native offenders upon their release from custody regarding non-Native society as a whole.

Release Procedures

Studies of release procedures, such as the application process, community assessments, earned remission, the actual granting of parole and mandatory supervision rules, illustrate that a disproportionate number of Native people do not obtain early release from prison. The reasons for this appear to vary from disinterest, lack of knowledge about the system, discouragement by institutional authorities and denial. John Bissett, of the Parole Board, makes the following comment:

> The general criticism of the correctional system is that it discriminates against Natives by treating them unfairly regarding access to programs and parole and that they are not released often enough or soon enough.[41]

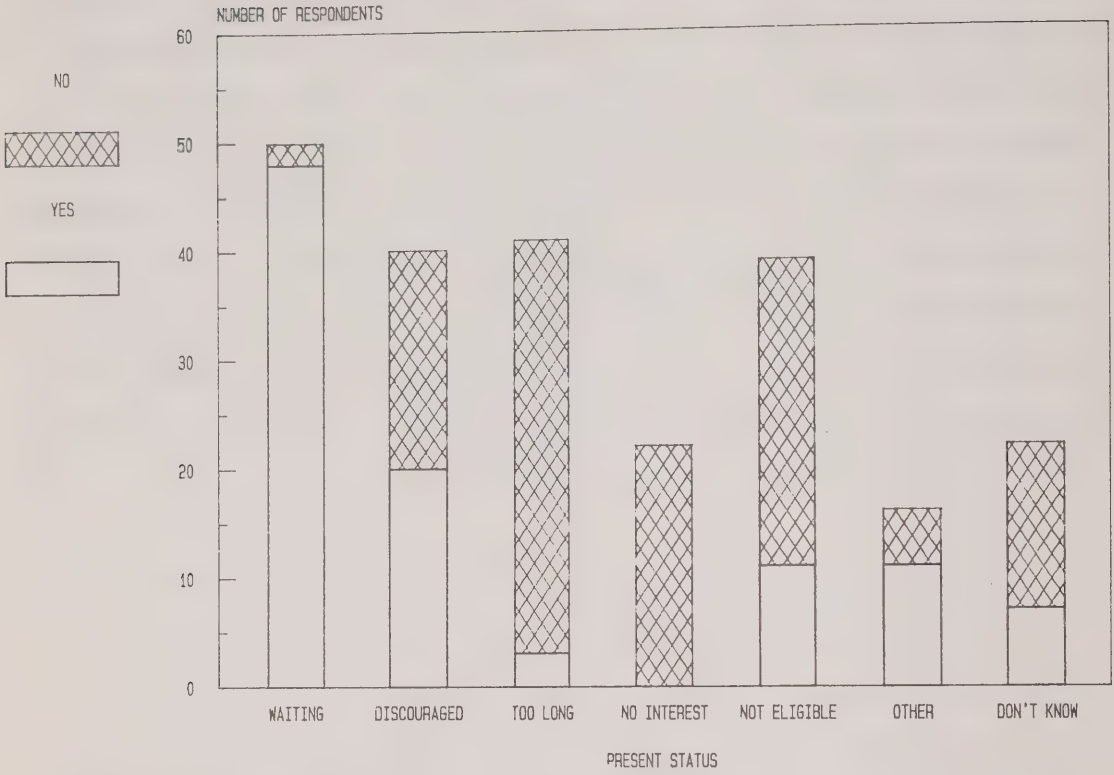
In an important sense, release procedures account as another form of sentencing in which the opportunity for differential treatment of Native offenders arises again. The personnel involved - corrections staff, Parole Board members, and probation and parole officers - are all involved in making judgments that directly affect the length and nature of sentences that the judicial system imposes. It is also only at this stage, at least in the case of non-jury proceedings, that societal representation is expressly encouraged in the determination of sentencing. For this reason we give considerable focus in this section to Native offenders' experiences with release procedures, taking into account the influence of socio-demographic factors on perceptions of discriminatory treatment of Natives, views on procedural fairness in general and offender's assessments of where changes are required.

1. Parole Status and Inmate Background

Forty-four per cent of the respondents in our study reported having applied for parole, with no significant difference emerging in applications between men and women. Of the 56% who had not applied, 68% of the men and 88% of the women stated an intention to apply for parole in the future, with only 22% of this group, as a whole, indicating no such intention (representing 11% of the total survey).

The graph on the next page illustrates the parole status of respondents.

Chart II.7: Present Parole and Application Status



Reviewing parole status in terms of socio-economic background, there does appear to be a slightly significant correlation between employment and parole applications. Forty-seven per cent of the respondents employed at the time of their arrest had applied for parole as compared to only 42% of the unemployed. Although not conclusive, there appears to be a slight edge in favour of those who have been recently employed in deciding to apply for parole. While 53% of employed respondents have not applied for parole, they give a number of reasons for failing to take this course of action, as illustrated in the chart above. Generally, employment status seems to be a more significant indicator for those reporting being denied, discouraged, not eligible or as viewing the process as being too long, where only 30% of the

respondents were employed, while over 75% of those "not interested" were unemployed. This appears to indicate that Native inmates who were employed at the time of their arrest are more likely to apply for parole once imprisoned and view their chances for success in a more positive light than those who were not so employed.

Applications for parole generally increase with advancing levels of education. For example, only 36% applied in the grade 7-10 level, while 53% and 52% respectively applied who had attained grades 11-13 and partial university. (Interestingly, about 75% of those with grade 6 or less had also applied). Higher levels of education may provide applications with more options once out of prison for further education or employment. In anticipation of these goals, one could suggest that educated prisoners are more likely to make applications for parole. Another yet related explanation could be that inmates with more formal education are more optimistic about the chances of obtaining parole due to their education such that they file applications. The high percentage of applicants with less than a grade 6 education implies that formal education itself does not affect the degree of understanding of the parole system by Native inmates, although the latter anomaly may be accounted for by the small sample size involved (less than 10% of the total group).

When looking at incarceration history, a definite pattern emerges. There is a steady decrease of parole applications from 58% for respondents incarcerated for the first time, to 44% for the second time and 33% for the third and fourth incarcerations. This pattern changes slightly for those with more than four incarcerations, with 46% of the Native inmates in this category applying for parole. (Some 26% of all rspondents are in this latter group). The general pattern nevertheless suggests that the less a respondent is in the system the more likely s/he will apply for parole, or conversely, the more incarcerations a respondent has the less s/he will apply. The hypothesis is challenged somewhat by the increase in applications by the group of

Native inmates incarcerated for the fifth time or more, but the majority (60%) of these are in federal institutions and the greater support facilities available may account for increased parole applications.

2. Perceived Disparities in Release Procedures

This section examines the respondents' perceptions of disparities in the following release procedures: parole applications; community assessments; temporary absences (both escorted and unescorted); and, in addition, assesses whether parole and probation officers are seen as treating Native offenders and non-Natives differently. Some of the previously discussed issues concerning socio-economic and personal history factors are correlated with the results of some of the aforementioned data to determine if there is any relationship among these different factors.

In general, the perception of the interviewees concerning disparity in treatment between Aboriginal offenders and non-Natives was less striking than expected, with a very high and consistent percentage of "don't know" responses averaging at 45%. While 32% of respondents felt there was disparity in the granting of parole, perceptions of disparity lessened in connection with parole application procedures (16%), community assessments (15%) and temporary absences (20%). This may reflect the differential impact of the two separate systems involved, since the parole board system is autonomous, and may indicate a greater sense of discriminatory attitudes existing amongst Parole Board members than amongst institutional staff. There are, however, some striking differences dependent upon the sex of the respondent: women were less inclined to see disparities in the granting of parole than men (20% versus 35%) but were far less certain of non-discrimination in the granting of temporary absences (28% seeing no disparity compared to 48% of males). This may be related to a higher interest amongst women in temporary absences to see their families (and

hence a greater sensitivity to disparate treatment). In assessing perceptions of disparity further, it is useful to look first at the correlation with parole application patterns. Of those who believe that Natives and non-Natives receive the same treatment in matters of parole, only 44% had made application for parole. Yet of those who felt there was different treatment of Natives and non-Natives, 59% had applied. In the group that reported not knowing of differences in treatment, 34% had applied for parole. It could be speculated that the provincial inmates comprise the bulk of this latter category and know less about the parole system.

The very significant levels of "don't know" responses suggest that other factors, perhaps related to education, employment offence and incarceration history are at play. In terms of education, the majority of those having completed less than grade 10 do not know if any disparity exists between Native and non-Native parole applications. This category of responses decreases in the grades 11-13 and partial university levels. The respondents who indicated there was different treatment increases from grades 7-10 at 30% through to partial university at 50%. This, perhaps, is evidence pointing toward the impact of higher education on the increasing awareness of disparities in treatment of parole applications. Responses noting no difference in treatment in parole applications also steadily increases from 10% in the grade 6 or lower level through to 27% in the grades 11-13 level, although it slightly decreases for the partial university level to 21%. This may reflect, once more, an increasing awareness of how the system functions among respondents with the higher education they attain. The data demonstrates then that "don't know" responses declined with increased education while respondents who believed disparities do exist jumped with higher education almost 20% from the average taken for the lower grade levels. Likewise, a growing sense of non-discrimination can be detected as educational levels increase. There is, therefore, a greater tendency toward expressing stronger views on the disparity issue

by those with higher education. Furthermore, respondents with increased educational attainment are almost twice as likely to assert that racial disparities do exist in the parole system than view the system as racially blind.

In examining the correlation between other background factors and attitudes towards release procedures, we found no significant trends to account either for any perception of disparity or for the high 'don't know' response levels. Employment status, for example, did not vary significantly with views on disparate treatment; nor was the number of incarcerations a good predicter of attitudes. There was a fairly strong positive link between the severity of offences and perceptions of disparate treatment. However, since over 52% of our surveyed inmates were incarcerated for violent (major or minor) crimes, it is not surprising that this group showed the highest relative sense of disparity, also at 52%, compared to the sense of disparity amongst inmates not involved with violent crimes, at 36%. The provision of parole and temporary absences is less frequent for violent-crime inmates, which may explain their higher sense of disparity.

Native inmates' perceptions of discriminatory treatment by parole and probation staff, at just over 30%, was consistent with their sense that the parole procedures themselves involved discriminatory application. Note should be made here that Native inmate views on parole staff are significantly more favourable than they are of institutional staff, although as with the views on release procedures generally, the very high "don't know" responses must temper any firm assessment that parole staff are in fact less discriminatory. In this regard it should be borne in mind that provincial offenders, due to their short sentences, are not usually actively involved with the parole system such that they would have firm views on it. The same holds true for experience with parole or probation officers, with whom most Native inmates would have had little contact other than as regards prior convictions.

In summary, the large number of respondents who did not know if disparities existed among the various release programs is probably due to three factors: to the numbers incarcerated for the first time; to the shorter sentences dispensed to provincial inmates which usually means less time to apply for release; and the different practices between provincial and federal institutions. The percentage of respondents who perceive differences of treatment for Natives and non-Natives are fairly consistent. Higher education appears to lead toward more release applications. Employment history does not appear to be a relevant factor in affecting the opinions one way or another. The type of offence does appear to influence perceptions regarding treatment under release programs; that is, a larger number of respondents with major and minor violence and major property offences indicate "different treatment" in temporary absence programs as compared to those with minor property and "other" offences.

A larger number of respondents who thought parole and probation officers treated Native people differently also indicated that there was different treatment in parole applications. This pattern was repeated in community assessments, however, it changes somewhat when compared with temporary absence programs and disparity in the administration of parole applications. These inconsistencies may be due to temporary absence programs being institutionally controlled while community assessments are not, leading to different factors being involved in each practice. It may also be that dissatisfaction with correctional facilities and staff generally tends to generate more negative perspectives on anything that is seen as tied closely to the prisons.

Opinions on the practices in the various provinces are relatively consistent throughout. Thus, if there are any differences between the provincial and federal institutions, they appear to be evenly distributed in the five provinces studied.

3. Attitudes Towards Release Rules

In this section we attempt to go beyond perceptions of discriminatory treatment to assess the interplay between Native inmate views on the general fairness and effectiveness of parole and release procedures such as earned remission and mandatory supervision. At the same time, the respondents' views on where priority should be given in changing release procedures is examined.

To begin with Native assessments of the effectiveness of parole as a rehabilitative program, the following table illustrates a much lower sense of effectiveness than one might anticipate.

Table II.7: Does Parole Increase Rehabilitation?

	Male		Female		Total	
	per cent	number	per cent	number	per cent	number
increases	34.18	54	36.17	17	34.63	71
decreases	12.02	19	8.51	4	11.22	23
no effect	13.92	22	8.51	4	12.68	26
combination of above	17.72	28	6.38	3	15.12	31
don't know	22.15	35	40.42	19	26.34	54
	100.00	158	100.00	47	100.00	205

In this table, 35% of total respondents believed that parole increased chances of rehabilitation, while 26% did not know one way or another. The 15% who responded with a combination of answers represents the view that the effect depends more on the individual than anything else, i.e., the person on parole determines if it works for him/her or not. The high percentage of respondents not having an opinion of parole is likely reflective of inexperience of many with it. Nevertheless, about half of the

respondents felt that parole was or would be rehabilitative, depending on the individual involved.

As shown in the following figure, over half of the respondents also felt the parole system was unfair, with only 23% viewing the system as either very or pretty fair in its general application (as opposed to its treatment of Natives).

Table II.8: Fairness of Parole System

	Male		Female		Total	
	per cent	number	per cent	number	per cent	number
very fair	1.27	2	4.25	2	1.96	4
pretty fair	20.38	32	23.40	11	21.08	43
pretty unfair	23.57	37	29.79	14	25.00	51
very unfair	27.39	43	14.89	7	24.51	50
combination of above	7.01	11	4.25	2	6.37	13
don't know	20.38	32	23.40	11	21.08	43
	100.00	157	100.00	47	100.00	204

Some of the explanation for negative attitudes include: the length of time it takes to apply for parole; the time it takes to receive word on parole status; the general composition of Parole Board members (i.e., they are believed to be non-Native who are unknown to the inmates, and presumed to have a lack of awareness of Aboriginal people); and the criteria used by the Parole Board to determine entitlement (i.e., designed to be non-Native oriented).

Two specific release procedures were given attention, namely, earned remission and mandatory supervision. The data, shown in the following tables, indicate a markedly high perception of fairness with earned remission.

Table II.9: Fairness of Earned Remission

	Male		Female		Total	
	per cent	number	per cent	number	per cent	number
very fair	6.45	10	21.74	10	9.95	20
pretty fair	40.64	63	47.83	22	42.29	85
pretty unfair	12.90	20	8.69	4	11.94	24
very unfair	30.32	47	4.35	2	24.38	49
combination of above	2.58	4	2.17	1	2.49	5
don't know	7.10	11	15.22	7	8.96	18
	100.00	155	100.00	46	100.00	201

Table II.10: Fairness of Mandatory Supervision

	Male		Female		Total	
	per cent	number	per cent	number	per cent	number
very fair	2.52	3	6.66	1	2.99	4
pretty fair	16.81	20	53.33	8	20.90	28
pretty unfair	17.65	21	20.00	3	17.91	24
very unfair	37.80	45	6.66	1	34.33	46
combination of above	7.56	9	0.00	0	6.72	9
don't know	17.65	21	13.33	2	17.16	23
	100.00	119	100.00	15	100.00	134

It appears from Table II.9 that most respondents had a personal experience with earned remission, given the low "don't know" and "combination" responses. The 35% who saw unfairness in earned remission may have been noting the control over remission that

institutional staff have. For instance, offenders can lose earned remission through being charged for institutional infractions such as sleeping in, work attendance, etc. The propensity of institutional staff to harass offenders with what are seen to be inappropriate charges, and thereby threatening earned remission, was evident in sighted in subjective responses.

A majority of respondents (52%) indicated that they saw mandatory supervision as very unfair or pretty unfair, reflecting a reaction similar to their views of parole. Nonetheless, 24% indicated they thought mandatory supervision was pretty or very fair, while 17% did not have an opinion of it. At the same time, only 7% of the respondents considered there to be any respondent control over the practice, i.e., the terms implied by "combination of above" usually meant that respondents thought individuals could somewhat determine the effect and success of mandatory supervision. Thus, it appears, over 80% of respondents have sufficient knowledge of mandatory supervision to comment upon it and, for the most part, do not believe it to be a fair practice. One of the reasons for this is mandatory supervision's relationship to earned remission. For instance, in federal institutions, even if an inmate maintains all his earned remission and departs from the institution, (s)he nevertheless has to report according to the mandatory supervision stipulations. Thus, the federal offender, unlike the provincial offender, is on compulsory reporting terms for the duration of his/her sentence. Many respondents thought mandatory supervision should be abolished and earned remission maintained on account of this disparity.

It appears, therefore, that although respondents perceive parole to be rehabilitative, it is for the most part seen as unfairly administered. Earned remission is seen as mainly positive, whereas mandatory supervision is perceived as an unfair practice, especially when offenders who have maintained their earned remission have to operate as if they are completing their prison sentence on the outside nonetheless.

In correlating the above responses with background factors, no significant inconsistencies were found. However, when correlating views on procedures with Native inmate assessments of the rehabilitative effect of parole, the feeling of unfairness with mandatory supervision proved unrelated to views on parole's effect on rehabilitation, whereas there was a clear link between positive views on parole's rehabilitative effect and the sense of fairness in earned remissions.

The following table illustrates where the respondents envision that change in the sentencing process should occur.

Table II.11: Changing Release Procedures

	Male		Female		Total	
	per cent	number	per cent	number	per cent	number
parole	16.00	28	38.18	21	21.30	49
earned remission	9.71	17	1.82	1	7.83	18
mandatory supervision	9.71	17	0.00	0	7.39	17
all or combination of above	34.86	61	9.09	5	28.70	66
none	0.00	00	3.64	2	0.87	2
don't know	29.71	52	47.27	26	33.91	78
	100.00	175	100.00	55	100.00	230

The highest number of respondents, 34%, indicated they did not know where change should occur in release procedures. The second highest group of responses, 29%, thought that all or at least two of the three practices should be changed. One should realize that many of the provincial respondents had no experience with mandatory supervision, thus parole and earned remission are probably the more common

combination. Twenty-one per cent of the respondents wanted parole to be changed, 8% wanted earned remission altered, and 7% thought mandatory supervision should be changed. Thus, 65% of the respondents wanted to see at least some of the release procedures reformed. While the low number of women respondents must be noted, it does seem that parole is the focus of greatest concern amongst Native women inmates as it is amongst male Native offenders.

Some of the changes envisioned by the respondents, as outlined by them in the group discussions in largely their own words, are listed below:

A) Parole:

- the restriction of the 35 mile radius should be more flexible so that family can be contacted regularly (particularly if they live on a reserve or in remote communities as they are unlikely to be within the 35 mile radius) and jobs over the radius can be accepted (e.g., a construction job can be all over a province);
- that institutional staff's suggestions be taken into consideration at parole hearings;
- the police report should only be part of the community assessment rather than have such a total impact;
- Native inmates should be able to return to their own communities if possible rather than stay in cities;
- there should not be a restriction of "no drinking";
- there should not automatically be a labelling of Native people as alcoholics;
- authorities should have to prove charges instead of hauling people back to prison on suspicion;
- more information should be forthcoming on how to apply for parole through briefing by parole officers on the procedure in detail and in person;
- Natives should hear about their parole status in a reasonable time rather than months later (e.g., the backlog was 9 months at the time the interviews were conducted);

- Native people should get more chances on parole even if they have previously been revoked;

- lots of Native people apply for parole but very few are successful; there should be more Natives getting out on parole;

- pre-release alternatives should be identified for Natives getting out on parole;

- give inmates more responsibility and more chances to get out on parole;

- that parole officers and the Parole Board be educated on Native culture; and the Board should recognize Native cultural programs for rehabilitative purposes;

- appropriate Native people be appointed as members of the Parole Board;

- as the majority of Native people are generally reticent, this should not be interpreted as uncooperative or negative behaviour by the Parole Board or anyone else in authority;

B) Earned remission:

- should only lose remission through serious charges rather than for charges like sleeping in, playing cards or eating in dorms;

- where charges are heard before committees, an inmate should be able to have someone appear with him/her as support and the panel should be consistent in its decision-making;

- should have to prove allegations against inmates before actually convicting on institutional charges;

- what is earned should be kept;

- should be even more statutory remission to serve as incentive for inmates;

C) Mandatory supervision:

- that Native people should not be relased from a maximum security prison on mandatory supervision as every effort should be made to cascade them to lesser security to "decompress" them through temporary absences, parole, etc.;

- more Natives should be released before their mandatory supervision date (much before the due date rather than just before it is due);

- abolish it completely as earned remission as practiced in the provincial institutions is adequate.

Institutional Self-Help Groups

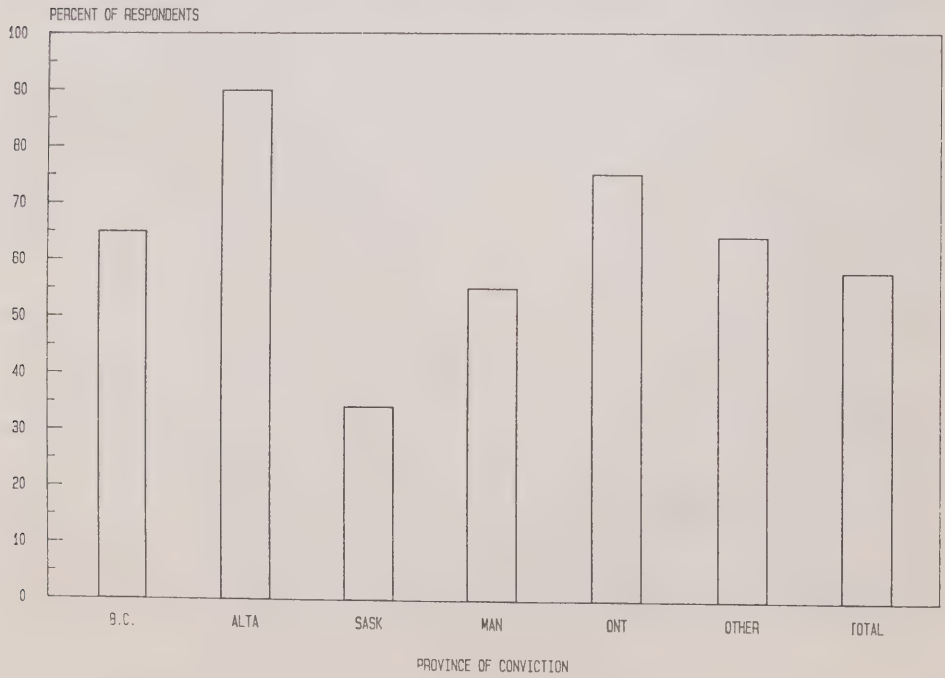
Alcoholics Anonymous and Native Brotherhoods and Sisterhoods were examined in detail to discern how the respondents perceive these associations. The latter groups are the focus of this section because of their Native orientation while Alcoholics Anonymous is a non-Aboriginal self-help group. The areas discussed include provincial variations in both self-help groups, attendance rates of the respondents and how both groups are perceived in their effect upon release plans. The spiritual nature of the Native Brother/Sisterhood is considered along with its implication for programming.

Participation rates in the Native and non-Native self-help groups are comparable, at 58% and 52% respectively. Native men participate with Brotherhoods to a more significant degree, 65%, than women (at only 31%). Male and female participation in AA is more comparable at 54% for men and 46% for women.

It is important to note that most Saskatchewan institutions, with the exception of limited Native awareness programming, are not permitted to have Native Brother/Sisterhoods. Saskatchewan Penitentiary, for example, had a riot in 1976 which was alleged to be the fault of the Native Brotherhood as it was thought to be too powerful. Similarly, the Prince Albert Correctional Centre supposedly experienced much the same problem around that time. Thus, with the exception of the Regina Correctional Centre, there are no Native Brother/Sisterhoods in Saskatchewan penal institutions. Needless to say, with the extraordinarily large percentage of inmates in all Saskatchewan institutions being of Native heritage, this was apparently a source of sometimes bitter frustration for them. The following chart illustrates this situation by the high percentage of respondents in Saskatchewan (66%) indicating they do not attend Native Brother/Sisterhood meetings. Alberta, on the other hand, is almost the antithesis of the position in Saskatchewan. Native Brother/Sisterhoods are encouraged there and supported by the institutional administration, which do not show

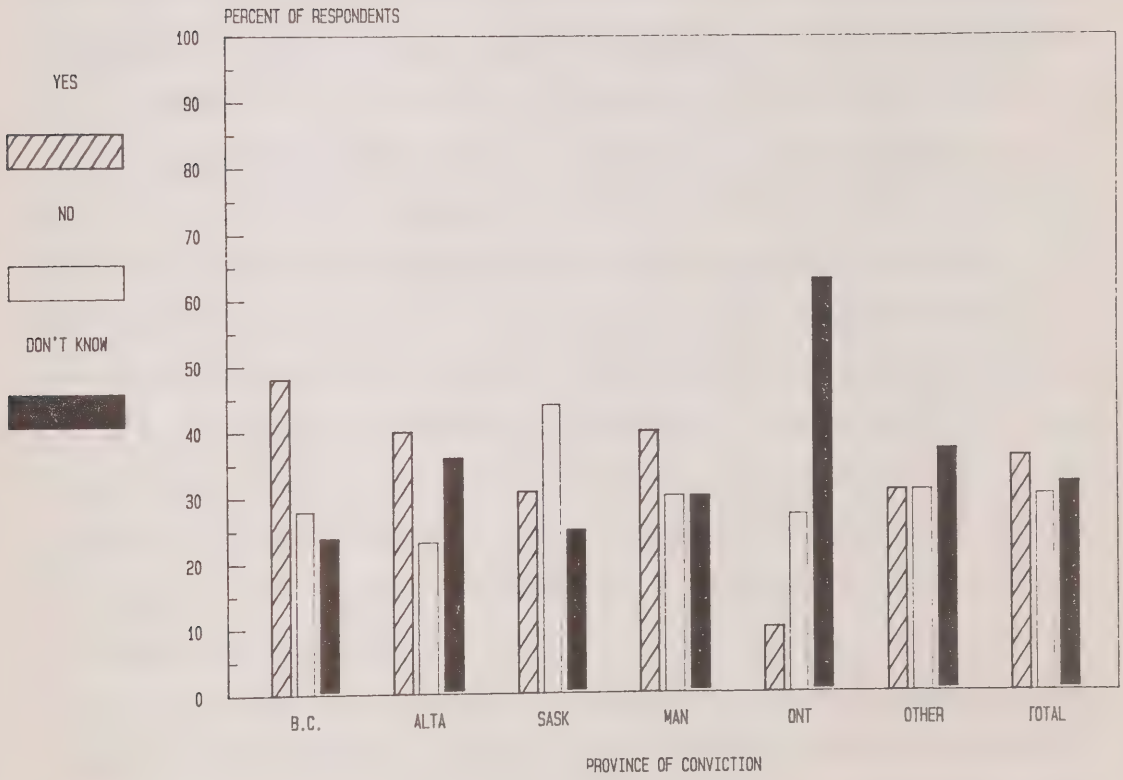
any indication of changing this policy. Drumheller's Brotherhood group stated that the administration perceives it to be a positive activity, however, they said if this group was placed in another institution, then it would be seen as a 'red power' or 'radical' group and would be shut down. At the same time, administrative pressure is maintained on the Brotherhood executive to keep it subdued. If the group becomes seen to be too reactive or aggressive, then they run the risk of being transferred involuntarily to other institutions across Canada. The inmates suggested that when negative incidents occur, they are often unfairly blamed on the Brotherhood. The Drumheller Brotherhood is perceived as a positive and legitimate force within the institution through appearing to have some innovative and realistic programming in place. This provides a definite channel to many of the Native respondents who choose to participate in it.

Chart II.8: Province of Conviction and Native Self-Help Participation



The following graph illustrates the relationship between province of conviction and whether attendance at a Brother/Sisterhood is believed to contribute towards release plans.

Chart II.9: Province of Conviction and Native Self-help Assistance with Release Plans



The provinces of British Columbia (48%), Alberta (40%) and Manitoba (40%) demonstrate that respondents believe attendance at these meetings do help with their

release plans. On the other hand, the responses in Saskatchewan show that a significant number (44%) do not believe that it helps while a lesser percentage (31%) indicates attendance at Brother/Sisterhood meetings assists with release plans. Despite these findings, many respondents indicated that this assistance was not coming through institutional recognition of the group, but rather on a personal level. The respondents stated that the spiritual direction attained via Brother/Sisterhood participation provided an inner serenity that contributed toward positive institutional attitudinal behaviour. The introduction of people and community programs in the meetings also provide useful resources in setting up realistic release plans. For the most part, many respondents thought that the institution as well as the Parole Board did not recognize the group as a creditable and rehabilitative self-help entity to the same degree as they did the Alcoholics Anonymous group.

Comparing Native and non-Native self-help groups, it is interesting to note that of the just over 50% of respondents attending AA, 64% also attend meetings of the Brother/Sisterhoods. Conversely, over 50% of those not attending AA do attend the Native self-help meetings. This indicates a strong preference for Native self-help groups even when the dominant and more institutionally-favoured group, AA, is being attended. In terms of comparable effectiveness in assisting inmates, it is interesting to note that AA is given more credit. In subjective responses this was accounted for as being due to perceived Parole Board preferences as well as the personal benefits received. Respondents seem to be searching for greater recognition for the Native Brotherhoods and Sisterhoods to be given more recognition and flexibility in developing their own viable programs. This can only be a positive step forward, as personal motivation and participation in Native oriented program development should contribute toward a higher sense of self-worth as well as giving Native inmates further incentive to succeed in their lives.

Although Native spirituality is not discussed at any length here, it must be remembered that it is an integral part of the Brother/Sisterhood movement. The emphasis on traditional spirituality is extremely important both to the Aboriginal inmates themselves and to the broader Indian and Metis community. It speaks to a 'fundamental right' of any people or nation to live or practice their religion, which is constitutionally recognized by paragraphs 2(a) and (b) of the Charter of Rights and Freedoms for all Canadians. It could also be argued that Native spirituality is likely further protected as an aboriginal right within subsection 35(1) of the Constitution Act, 1982, which recognizes and affirms "existing aboriginal and treaty rights".

Native Women in the System

Most studies of corrections have focussed primarily or exclusively upon the male prison population resulting, it appears, in the same methods and structures used with the men being applied to women. This seems patently unfair considering that women do have some different needs from men. For example, the Brief on the Woman Offender found that female populations are usually more disturbed than male populations.[42] If one woman is upset, then it affects the other women in the group,[43] whereas the male is more likely to withdraw and be silent so the effect of one man's agitation is not so obvious on the other inmates.

Another theory why women may not accept prison life as well as men is because they may not be oriented traditionally to participate in groups as men are through sports or business. This may partially explain why there are no Sisterhoods in Pine Grove and Portage La Prairies' Correctional Centres for Women, but this is more likely a result of a lack of awareness as well as a lack of interest due to the large number of women serving their first incarcerations and recidivists just serving their sentence. In our view, based on impressions obtained from the interviews, these women were doing "unproductive" sentences. Some of their children were scattered

about, either with relatives or with child care agencies, while they waited for their mothers' sentences to pass. Although Portage permitted some children to remain with their mothers, Pine Grove did not such that a newborn baby was denied its mother's milk. These are only a few examples of situations that are likely to cause hardship and ill-feeling, neither of which facilitate the delivery of justice.

In light of the significantly greater number of men involved in the overall prison administration, dealing with women, including the Parole Board, these differences must be considered when assessing an inmate's performance. For example, both male and female inmates may be equally disturbed yet the female may exhibit it more obviously through greater expression of emotion. A woman's refusal to participate in group activities should not also be automatically assessed in the same manner as a man's refusal. As was indicated in the discussion on membership in AA and Brother/Sisterhoods in the previous section, female participation rates are generally lower.

Native women demonstrate through their responses that they do believe they understand the sentencing they have received and allow themselves to be processed accordingly. For example, only 30% of the women respondents had some problem in understanding their sentence or hearing whereas 62% had no problem. Furthermore, only 20% indicated that no one explained sentencing to them. Other authorities who explained sentencing to the women were: defence lawyer (33%), combination of authorities (25%); Native courtworker (8%); judge (8%); and other offender (6%). Thus, it appears women respondents believe they understand their sentence and had one or more people explain the sentencing process to them. This is contrary to an Ontario study which found that only 35% of the Native women understood the procedure in obtaining a pass.[44] This may indicate that the difference in understanding the sentence received and the procedures for release may be immense. For example, 47%

of the women are applying for parole and 53% are not. Many women at Portage La Prairie (Manitoba) and Pine Grove (Saskatchewan) said they were not applying because their sentence was too short and the time it takes to apply for and obtain parole is too long.

Our data focussed on the decision to seek parole and one cannot assume their success. For instance, McCaskill's report suggests that:

> There was a feeling among some inmates and correctional personnel that because of the lack of community support in urban areas for Native offenders it was difficult to develop a convincing parole application. Other factors which contributed to the problem included: lack of adequate skills and assistance in drawing up an application, a past record of alcohol abuse, lack of clearly stated goals, a rural background and lack of treatment facilities ... or ... large number of Native inmates who had waived their right to apply for parole ...[45]

The parole process is a difficult hurdle for Native women as factors such as past history, prison conduct and post release plans are taken into consideration. Many Native women who are in prison have backgrounds of alcohol abuse, family instability, single motherhood, and lack of interest in participating in prison programs. The preparation of a release plan is sometimes beyond their understanding and ability. They have few employment contacts, their families are not readily available, and they often do not understand that they have to take the lead in contacting halfway houses or other transition programs. A halfway house also will make its decisions based on an inmate's background and prison conduct. Thus, it appears that Native women may remain in prison longer than necessary due to a lack of knowledge, resources and support. The Ontario study indicated that 67% of the Native women who had been denied parole were not aware that they had to apply again for further consideration.[46] Therefore, although the women may understand the sentence hearing, they clearly may not comprehend the procedures to be used in the whole incarceration process.

Another issue concerning women is the presence of only one federal institution for female offenders located in Kingston, Ontario. Thus, if a Native woman receives a sentence of two years or more, she is separated from all those factors that could give her release options if her home is anywhere other than southeastern Ontario. Native women should clearly be allowed to stay closer to their families, as the separation, particularly from children, was evident as a source of considerable pain and anger. Arrangements should be made more frequently with the provincial institutions so that women can at least stay in their home provinces. This does occur at present, however, it should be utilized more regularly. Native women inmates asserted that rehabilitative options must be dramatically expanded outside of prisons as an alternative to imprisonment. They also stated that the Native Sisterhoods must be acknowledged as valuable self-help groups and receive institutional support for their activities.

The general difference between the treatment of men and women must be recognized by staff who must be sensitized to this fact. This differentiation doubly applies regarding Native women. They need to receive more assistance in understanding the system and in preparation of release plans. Realistic training skills to develop greater self-sufficiency upon release must be implemented as well as programs which promote family contact so as to encourage the maintenance of crucial ties. Native women are already worse off, educationally and economically, than their male counterparts. Despite rates of unemployment at 76%, for example, Native women must also contend with the maintenance of families, often as single parents, that are larger and younger than the Canadian norm. Thus, just as Native women face even bleaker prospects than Native men, so too must the justice system give enhanced and immediate attention to avoid worsening an already intolerable situation.

CHAPTER III

CONCLUSIONS AND RECOMMENDATIONS

The over-representation of Indian, Metis and Inuit peoples (especially Indian and Metis) in federal and provincial correctional facilities is a clear and unmistakeable fact. The data generated by this research has further confirmed the results of previous studies as well as the assertions of various Aboriginal organizations. This is a tragic reality that can neither be justified in acceptable terms nor be allowed to continue unresolved.

The survey results also demonstrate that the Native inmate population is representative of the plight of Aboriginal people as a whole with an extremely high unemployment rate, low level of high school completion, a high rate of contact with the criminal justice system and a general lack of understanding of criminal law and procedure. The generally disastrous socio-economic situation of most Native people renders it a mammoth task of redistributing or sharing Canada's wealth with the original owners of this land if we are to hope for a level of equality between the dominant and Aboriginal societies, not to mention fostering the economic autonomy of indigenous communities.

Nevertheless, the criminal justice system cannot shirk its own responsibility for exacerbating this negative situation. We cannot throw up our hands and give up by stating that the criminal justice system is powerless to redress the present crisis as it cannot respond to socio-economic factors that are beyond its scope. Just as it would be irresponsible to turn a blind eye to this reality, so too is it inappropriate to suggest that nothing can be done by the justice system to play its role in ameliorating these conditions.

We believe that many Native offenders view the justice system as a critical component of the dominant society that is excluding them or rendering them marginal. Furthermore, the data indicates that they believe that virtually the entire justice system as a system - in contrast to many of the individuals who work within it - is biased against Native people. Surely this allegation of racism must be taken very seriously indeed. It warrants a decisive and immediate response.

Such a response, however, cannot be one of treating all offenders equally, as the philosophy of the criminal justice system presently provides. Not only has this approach obviously been unsuccessful in dissipating a belief of negative treatment being dispensed to Native people, but it also ignores certain fundamental factors. The Indian, Metis and Inuit peoples residing in Canada are not simply the poorest of the poor such that one can rely upon economic aid initiatives to eliminate the high incarceration rates. Aboriginal people possess dramatically different cultures, values, traditions and laws from the dominant society. Economic equality alone will not alter this fact. Increased education is also not a complete answer in light of both the presence of and the evidence from a significant number of inmates with some university training.

We propose that Native people should be treated differently. This difference must not, however, be to their detriment. Instead, we believe that the criminal justice system must recognize the unique legal, historical, cultural, economic and political position of indigenous peoples within Canada. The Indian, Metis and Inuit peoples are recognized as having a special status in the Canadian Constitution. Furthermore, they have had, and continue to possess in many parts of the country, their own languages, cultures, religions, customs and laws. Traditional Aboriginal laws frequently do conflict with aspects of the general Canadian criminal law and the way in which the Canadian criminal law is administered. This difference can and does lead to

misunderstandings and conflict with both the offence and the sentencing provisions in federal and provincial law.

Numerous specific recommendations and opinions of the Native offenders interviewed are sprinkled through the report, particularly in Chapter II, and do not need to be repeated. Additional recommendations for change provided by the individual respondents are also contained in Appendix 2. The authors have provided their own reactions and recommendations as well at various points in this study. Furthermore, a large number of studies, task force reports, academic articles, and submissions have been made over the years regarding the tragic relationship between the Aboriginal people of Canada and the criminal justice system.

It is worth noting that over a decade ago the federal government sponsored the National Conference on Native Peoples and the Criminal Justice System in Edmonton. This conference included the active involvement of Native inmates through their direct participation as delegates and through written submissions from a number of the Native Brother/Sisterhoods as well as all governments, Aboriginal organizations and experts in the field. The conference was followed by a Federal-Provincial Ministers Conference on the subject at which time most of the recommendations from the former were formally adopted by the Ministers. The fact that little has changed in the intervening years has not been through any lack of knowledge of the problem or lack of ideas to combat it. The report of the conference, Native Peoples and Justice,[47] warrants re-reading as almost all of the recommendations remain apt today. Yet little has changed. The difficulty has largely been a result of a lack of political will and of financial commitment to provide the necessary resources to transform the criminal justice system significantly in terms of how it relates to and affects the Indian, Metis and Inuit peoples of Canada.

There is also an element of reluctance or intransigence on the part of many professional members of the justice system to accept the idea that different strategies must be pursued. That is, the view that justice is blind such that all alleged offenders are to be treated the same with distinctions tied solely to certain acceptable factors is well entrenched in the very core of our legal system. Therefore, many decision-makers have preferred either to ignore the shockingly high preponderance of Aboriginal people as criminal accused; or to blame the victims themselves; or to assert that other factors are to blame (such as lack of legal knowledge by Aboriginal people, high unemployment, low educational attainment levels) even when the data won't support this explanation. Whichever rationale is relied upon, the result is the same — a denial of the need for change. Alternatively, reforms are proposed that are to be applied to the system as a whole and to all offenders uniformly. Thus, no special consideration for Indian, Metis and Inuit peoples are contained in the master plans for change.

In light of these comments, we will only provide a few further concrete suggestions to close the study.

Recommendation 1: A dramatic increase in cross-cultural education for all members of the justice system (judges, police, prosecutors, defence counsel, probation and parole officers, court staff, prison administrators and prison staff) is vitally necessary. An ongoing, systematic program run by Native organizations with considerable involvement from Native offenders should be implemented to sensitize the personnel of the justice system about the distinct social, cultural and legal values of the different peoples involved.

Recommendation 2: The Government of Canada should financially support the establishment of an Aboriginal Justice Centre. Such a centre could serve as a clearinghouse and data bank for all of the research, task force reports, commission studies, scholarly articles, etc. that have been written concerning all aspects of the justice system's impact upon the indigenous population as well as regarding their own legal regimes. It should also ensure that accurate statistics are kept throughout the entire justice system regarding its interaction with Native people.

The existence of this type of centre would facilitate further research, avoid duplication of efforts, and provide current, complete data on which policy makers in federal, provincial, territorial and Aboriginal governments could rely in making their decisions. It would also serve to monitor the arrest, conviction and sentencing rates of Native people to ensure that this problem, if it continues unabated, does not disappear from public view or from the decision-making process. Unfortunately, the over-representation of Native people in Canada's jails is an issue that surfaces only from time to time for attention then quickly sinks again without any changes having been made. Furthermore, there has been a general unwillingness of provincial goverments and the legal system to record statistics on an ongoing basis regarding Native people by excluding race as a criteria for data collection. This has led to a masking of the magnitude of the problem and should be halted.

Recommendation 3: An Aboriginal-oriented research fund should be developed to promote and encourage competent Indian, Inuit and Metis researchers to perform indepth investigative studies in all areas of the criminal justice system. Relevant government departments should be prepared to provide

funds for research and to assist in the training of Native people to become highly skilled researchers so as to ensure that the Native perspective is regularly displayed in a significant percentage of the criminal research in Canada. This recommendation is also contained in the Solicitor-General's User Report of 1984-87 along with the following principles, which we can readily endorse, as ones that should be followed by granting bodies and Native peoples:

1. Funds and the development of research competence should enhance the capability of women and non-sectarian Indigenous groups and not simply flow to male-dominated political organizations;

2. Research priorities should be determined with the full participation of Indigenous people;

3. The initiation, design, and implementation of research should be directed/performed by Indigenous people;

4. Research should be focussed on the users' information needs and should be conducted to maximize community participation in the process;

5. Data collection allowing for the comparison of Indigenous and non-Indigenous populations should be encouraged; and

6. The evaluation of predominantly non-Indigenous institutions and processes from the perspective of Indigenous people should be encouraged.[48]

Recommendation 4: Native spirituality should be fostered within correctional facilities in numerous ways including the following:

1. That there be a promotion of Aboriginal identity to those offenders of indigenous ancestry who wish it through the provision of optional Native studies courses within prisons.

2. That the Federal Directorate on "Traditional Aboriginal Spirituality and Religious Practices in Federal Prisons" (premised on Joseph Couture's

work) be interpreted broadly and not narrowly as seems to be the practice, e.g., by allowing only one elder per prison when there could be 5 or more Indian Nations represented among the inmates; only allowing sweet grass to be burned in one designated area for fear that it could be used to hide marijuana; the handling of "sacred bundles" without sufficient respect and proper dignity; etc.

3. That the existing Native programs, i.e., the Native Brother/Sisterhoods, as well as those programs they develop, be recognized and given credibility as realistic and useful activities within the institutions as well as by outside authorities such as parole, community assessments, etc. This can be accomplished through encouraging and educating people on the goals and functions of these programs. Thus, the Parole Board should give individuals credit in their parole applications for their involvement in spiritual activities, Native drug and alcohol awareness training, and other similar initiatives in a fashion similar to the recognition granted to non-Native progams such as A.A., Narconon, etc. The Brother/Sisterhoods should be fostered through less restrictions on membership numbers, the provision of more space and time allotted to their activities, and greater freedom to receive visitors.

Recommendation 5: The indigenization of the criminal justice system through the hiring of Indian, Inuit and Metis people as guards, administrative personnel, policy makers, parole and probation officers, police, etc. should be actively encouraged. Although Native courtworkers, special constables, band police, Native Justices of the Peace, and Native law programs have been

somewhat successful in increasing the number of justice system personnel of indigenous ancestry, more programs of this nature have to be promoted.

It must also be realized that the objective is not merely to put a few Native faces in the ranks of the justice system, let alone solely at the lower levels as is the case today. The rationale for action is also not to co-opt dissent and anger from the Aboriginal community by putting Aboriginal jailers and police in charge. The intent should be to alter the status quo by allowing Aboriginal values and aspirations to influence the criminal justice system from within while positively affecting the attitudes of non-Native co-workers through their daily association.

Recommendation 6: A further step has to be taken to ensure that these Native members of the system and others are not perceived as just "enforcing the white man's law". They must also be seen to be representing a viable and credible force within the Canadian justice system as well as within the various Aboriginal Nations throughout the country. Therefore, respect for traditional or customary laws could be successfully incorporated into the practices of various components of the justice system as long as they do not offend those basic human rights protected by the Charter. Long term benefits from these programs are dependant in part upon Native people, who take on these roles, not having to give up their ideals in order to dispense European-based values. If this can occur, then we may make some progress in Native-white relationships. Obviously, there is room for an approach that can be adopted by Native people that will not in any way threaten the fabric of the dominant society, while still enabling Native people to remain true to their own values and beliefs.

Furthermore, indigenizing the justice system can neither be viewed as the exclusive solution nor as a band-aid approach to patch over the conflicts that will remain. This approach can and must be used for some parts of the country, particularly in urban areas or regions in which the Aboriginal population is minimal, while the next two strategies will be necessary to be used elsewhere. Indigenization should never been seen as the sole answer for on its own it will only minimize the problems but not eliminate them.

Recommendation 7: The development of decison-making arenas and services that are totally controlled by Native people (e.g., justice councils, community committees for parole applications, community assessments, alternatives to imprisonment, halfway houses, etc.) is absolutely essential. There is a clear need for Aboriginal communites to assert their responsibility as a vital factor in the general society's distribution of justice by working in conjunction with the existing components of the criminal justice system. There are many Indian, Metis and Inuit communities that prefer to modify the dominant system while working very much within it. That is, they wish to influence or control some of the important decisions (e.g., type of disposition, location of incarceration) and not others (e.g., determining guilt or innocence). Likewise, there are components of the system that some Aboriginal communities want to operate (e.g., half-way houses, bush camps, lock-ups) while there are others that can be left with the general system (e.g., maximum-security penitentiaries). The system qua system needs to be revamped so as to permit this type of flexibility and opportunity.

Recommendation 8: Aboriginal communities have the right to develop their own distinct legal systems. This bold statement does not mean that they be in direct opposition to the federal and provincial systems, but rather that they could exist in parallel within the overall Canadian constitutional framework negotiated by the relevant parties.

Despite the "indigenization" process which appears to be occurring in various law enforcement systems, the dramatic over-representation of Native peoples persists. This may be explained in part through high levels of staff turn-over and the limited scope of discretion or power given to many of the Aboriginal members of the general justice system. Perhaps it may also reflect problems that appear when Native people are forced to dispense non-Native justice. This dilemma may be insurmountable for some, and thus many valuable Native people leave what they come to see as untenable positions.

Research has been underway for several years by certain Tribal Councils, Aboriginal First Nations and Indian band governments, e.g., the Saddle Lake Nation, regarding the possibility of re-establishing the traditional justice system. Other communities are seeking greater respect for those which still function "unofficially". The two communities of Akwesasne and Kahnawake already possess their own court systems with judges, prosecutors and defence counsel which they wish to expand jurisdictionally.

Discussions on Aboriginal self-government, which could include control over local justice, have already been occurring for several years under the auspices of the First Ministers' Conference process mandated by section 37 of the Constitution Act, 1982. Thus, this is far from an unrealistic proposal. Although constitutionally grounded talks are not currently occurring, the commitment to Aboriginal self-government has not disappeared. The most

important aspect of any separate systems will be that the local Indian, Metis and Inuit peoples be permitted to develop their own approaches under principles which are important to them.

It has already been seen that the basic values of Aboriginal people when it comes to criminal conduct are not that dissimilar from the values of non-Natives, even though there is a huge disparity in the economic and social opportunities. Native justice systems could provide not only an opportunity for pride, but also offer areas for personal and intellectual growth; that is, in areas of research, law, politics, etc. Since Native people are not static, their principles of law would also be innovative and based on longstanding traditions as well as on their practical sense of the world around them. They will likely continue to pursue approaches that have only recently been "discovered" by non-Native society, for example, restitution, community work alternatives, etc. In so doing, they may offer models that will be instructive to the general system. The most important point here, however, is that as Aboriginal-made law, although it may reflect aspects of non-Native law from time to time, it will be more readily accepted by those Native peoples concerned as it is developed by them and reflects their own values.

For example, consensus groups, committees of elders or community councils could be implemented to be decision-makers where conflicts arise in Native communities. Labour boards, family conciliation, juvenile diversion and other components of the general system already incorporate Aboriginal ideas and values, thus, like them, Native dispute resolution mechanisms could be easily set in place. This has existed in Canada for many years for some Native people and was proposed more broadly as peacemaker courts by the Province of Ontario in 1975. The latter proposal envisioned a situation in which individual offenders

could appear before an Aboriginal tribunal or provincial court dependent upon the circumstances of the case. If (s)he chose the Indian tribunal, then three selected members of the community would settle the conflict through reconciliation and compensation. Again, the object was to restore community harmony as much as to punish offenders. The fact that this reflected prevailing values and was settled by that community would strengthen both the community as a whole and the effectiveness of the process.

This is just one example to demonstrate how a Native council or court could work. Although carefully examining this area would take a further paper, it should be noted that the vast majority of Indian tribes in the United States do have their own tribal courts with very broad jurisdiction indeed. Furthermore, the Special Committee on Imprisonment of the Canadian Bar Association has also recently endorsed this fundamental change.

Recommendation 9: Judges should particularly become aware of the cultural differences in values and perceptions of Native people when they appear in court as witnesses or as the accused. It would be appropriate for the Canadian judiciary to receive some degree of sensitization to Aboriginal concerns in general as well as education about the original peoples and their current aspirations. This could occur through the auspicies of bodies such as the Canadian Judicial Council or the Canadian Institute for the Administration of Justice.

It is further suggested that the judges in each province be brought into a similar learning experience on a local level. This could provide an opportunity to discover the specific beliefs, values and history of the different Aboriginal

groups within that geographic region as well as their existing problems and goals. This could be conducted on a co-operative basis in the four Atlantic provinces.

A further benefit from this recommended initiative would be that the Aboriginal participants would also learn from the judges. Each would become individuals rather than roles.

Recommendation 10: The courts in the Northwest Territories have regularly held that the lower life expectancy of Aboriginal people and the greater social and psychological impact of incarceration upon individuals living a traditional lifestyle should be reflected in judicial sentencing policy. The Ontario Court of Appeal has expressed the same view in Regina v. Fireman, [1971] 3 O.R. 380. This position continues to warrant support with appropriate offenders as to do otherwise can result in a disproportionately harsh sentence.

Recommendation 11: Canada's judges must be vigilant in ensuring that all accused fully understand not only the charge but the criminal justice system as a whole. This requirement is especially apt when it comes to alleged Indian, Metis and Inuit offenders. The presence of the section 10 and paragraph 11(a) Charter rights and the availability of legal aid does not alleviate the need for the judiciary to be certain that Aboriginal accused are aware of the full consequences of their decisions and their evidence.

Recommendation 12: There is a need for the criminal justice system to be certain but also to be flexible. Thus, regular review is required that involves Aboriginal people both directly and actively in the evaluation process.

APPENDIX I

METHODOLOGICAL NOTE

General Problems of Validity

The survey has seldom been adopted as a tool for gathering information on the criminal justice system except to gauge public opinion and to canvass the professional views of the jurists and lawyers actively involved (e.g., the public opinion, judges and lawyers surveys conducted by and reviewed in the report of the Canadian Sentencing Commission). There are, of course, significant procedural difficulties in extending the survey technique to the inmate population. From the vantage of orthodox social science, there is not, however, any problem of validity or reliability attending such surveys that are not also present in canvassing other interested participants in the process, such as judges, lawyers or prison officials.

Nevertheless, there are in our view a number of theoretical, methodological and social obstacles to the study of Native inmate opinion that merit special mention.

First of all there are the social or psychological hurdles facing any study of inmates: non-inmates, including social scientists, are inclined to view all inmate opinion as heavily biased. There is clearly a readiness to distrust those who have transgressed societal laws. Such an attitude does not, generally speaking, colour survey studies of judges' or lawyers' opinions, although they are just as interested in matters of system maintenance and change, and they will be just as aware that their views, being anonymous, will not affect their personal position.

This study was not designed to overcome or substantiate any biases about receiving or learning from the views of inmates, although it is hoped that some sensitizing will be accomplished. The study was instead designed to explore the views

of Native inmates on potential areas of need for change in sentencing and related processes in the justice system they encounter. This is, above all, an exploratory study, aimed at generating and exploring hypotheses rather than testing or proving them. The data does show a fair consistency of views throughout (except for high "don't know" response areas, such as with plea bargaining) and does support the growing body of professional literature on the special needs and status of the Native inmate. The results also generally are in accord with the submissions made over the years by Aboriginal organizations and Native inmate groups. However, this general statement about the apparent reliability and significance of the findings leads to additional problems.

Utilizing standard interview techniques as the primary source of information on Native inmate views and perceptions give rise to questions about validity. "Validity" in this context refers to the extent to which the results accurately reflect the reality of the respondents' views, perceptions, thoughts and even the veracity of their answers to factual questions. Questions of validity of interview techniques have not generally been given much study. The primary methodological concern tends to be with reliability, i.e., the probability that the same results would be replicable. To some extent, increased reliability is thought to also increase validity, but these two goals are somewhat competing in that reliability most often requires the use of highly standardized and "bias-free" interview schedules and interviewer techniques, whereas validity increases to the extent that the respondent is not placed in an artificial context by the interview.

A special problem of validity - ecological validity - arises when the respondent group is a cultural minority. The problem here is to avoid imposing an artificial or culturally alien form of communication and to enhance the compatibility of the interview context to that of the everyday experience of the subjects. This problem

extends to both the format of the interview itself and to the specific terms or questions employed. For example, the "interrogration" or "written-response" format of questionnaires may be accepted as normal and every-day within the dominant society and not give rise to an imposed interpretation of social reality. However, the interview may itself impose on Native respondents a framework description of reality that simply does not accord with their own perceptions. Their answers may be replicable, but they may not be valid. As for specific terms, we have noted in the text that words like "guilt" may pose a problem. Similarly, we found that respondents' understanding and capacity to respond to questions about "plea bargaining" was much lower than with other procedures in the sentencing process. This may reflect a factual situation about the relatively low amount of plea bargaining available to Native offenders or it may reveal a problem with Native comprehension of the concepts of "plea" and/or "bargaining".

In summary, it is important that the technique of the interview not impose artifical or culturally alien definitions of reality on the respondents. Anthropological interview techniques (participant-observation, highly contextualized and open-ended) are commonly employed in these situations. Aside from the problem facing field-work in prisons, ethnographic techniques are not readily adaptable to generating comparable data seeking to hold constant or select out specific variables (such as education, employment or opinions on discrete procedures or personnel).

Measures can be taken to overcome the dilemma of validity. Insofar as Native respondents are concerned, perhaps the best way to reduce validity problems would be to have an accurate benchmark of opinion on Native perceptions of "justice" derived from non-inmate Native respondents. Such a benchmark is not currently available but should be a high priority for any follow-up research into this area.

A second measure, adopted in this study, is to increase the compatibility of the interview context with the normal situation of the respondents. Within the limits imposed by institutional demands, this was accomplished by heavy reliance on Native self-help groups. The kinds of issues raised in the interview are common discussion points in meetings of the Native Brother/Sisterhoods and to the greatest degree possible the context and social dynamic of these meetings was drawn upon so as to create a supportive, normal environment. This was particularly important as a tool to filter out insincere responses, since the self-help groups have already evolved their own techniques for breaking down defensiveness and insincerity. In addition, significant time was spent explaining the purpose and the content of the questionnaire. The interviewer, who is an Indian lawyer, devoted particular attention to developing a positive atmosphere and rapport with the respondents. In short, efforts must be made to keep the setting and social context of the interviews as free from artificial intrusiveness as possible. In this study, most interviews were conducted in connection with group discussions in order to accomplish this goal, as well as to solicit information on the orientation toward reforming the justice system of the self-help groups themselves.

Study Approach and Limitations

Limitations of funding and time imposed by the Canadian Sentencing Commission precluded a full random survey designed with rigorous statistical significance in mind. For example, our survey was restricted to only provinces west of Quebec. Inclusion of Quebec, the Atlantic provinces and the Territories might have yielded different findings. Similarly, the adoption of self-help groups as a vehicle to sponsor volunteers may well have had an impact on the opinions insofar as participation in the Sisterhood/Brotherhood movement may be related to more definite (negative or

positive) views on the justice system. In addition, of course, no control group of non-Native inmates or Native people outside the prison system was surveyed, further limiting the authority of the conclusions that can be drawn.

The survey was pre-tested in three federal institutions in Kingston. The final questionnaire comprised 128 enquiries within the text of 55 questions, the majority seeking structured and some seeking unstructured or open-ended responses. In all cases the interviews were conducted in privacy (from institutional staff). As mentioned above, the lengthy and highly "structured" nature of the questionnaire schedule, while important for data comparability, may reduce validity.

Selection of locales for interviews was accomplished with the assistance of the Chairman of the Sentencing Commission and on the basis of approval from institution directors and wardens. The respondents were obtained through the sponsorship of Native self-help groups or inmate committees. There was, in short, considerable mediation in the selection of respondents. Inmate participation was, in all cases, voluntary. The questionnaires were completed in individual face-to-face meetings (especially in B.C. and Manitoba) or in small-group contexts (particularly in Alberta and Saskatchewan). In addition, group discussions were held as reported in Appendix 2.

The introductory chapter identifies in Table 1 the nineteen institutions covered, as well as one half-way house. However, note should also be taken of institutions not covered. One group, considered to be the "most affected" in terms of sentencing severity, was Level 6 institutions such as Kent (B.C.), Edmonton Maximum and Milhaven (Ontario). The Special Handling Unit in Prince Albert, Saskatchewan was not surveyed due to an institutional decision by the Warden, who felt that the views of inmates in his unit would not be relevant to a sentencing study.

As illustrated in Table 1 in the text, the mean average coverage of all Native inmates in the five provinces was 14% and the mean average number of Native

inmates surveyed for each institution was 11.5, or just over 24%. The sample sizes from some of the institutions (such as Lakeside, Kingston Penitentiary and Headingly) are clearly too small to generate comfort concerning the views of Native inmates about those institutions themselves. Caution would also be advised regarding drawing conclusions about inter-institutional or inter-provincial variance of views given the small Ontario sample and a relatively high standard deviation of 17.95 for the number of Natives surveyed as a percentage of total Natives in the institutions canvassed.

Given the small sample sizes necessitated in this study, a consideration in assessing the validity and reliability of the data is the degree of respondent self-selection. For example, conversations with the respondents indicated a wide range of reasons for participation, ranging from boredom and the opportunity given to "let off steam" to assertions of optimism about the study's utility and the realization that it was their only chance to influence the Sentencing Commission. Just as relevant were the reasons cited by inmates and parolees for declining participation. Some were reticent to get involved in any unstructured activity and nervous about institutional reaction to the results, while some noted that the preponderance of judges on the Sentencing Commission precluded its objectivity and was consequently a waste of time. Others simply disliked the length of the questionnaire, were occupied with other activities on the weekends most often used for interviews, or felt that others would adequately represent their views.

Terminology

For the purposes of consistency and clarity, the following terms used throughout the study are defined below. As indicated above, however, the "ecological validity" of the interview data in part depends upon a basic sharing of terminological and conceptual forms between the researcher and the respondents. This issue was not the

subject of specific attention in the study, although the conduct of the interviews was structured so as to minimize such confusion by pre-interview discussions and by expanded descriptions of some terms that caused difficulties in the pre-test.

Native:

Persons who identify themselves as descendents of peoples indigenous to North America before European settlement, i.e., Aboriginal, Indigenous, Indian (non-status or status, treaty or non-treaty), Metis (undefined) or Inuit. As noted in the text, the term "treaty Indian" was generally utilized and understood as referring to "status Indians". "Non-status Indian" was understood as referring to an Indian who had or was descended from someone who had lost status or enfranchized under the Indian Act system. Metis is a more difficult term to define as it can refer in common usage to either a person of mixed-blood (regardless of "status"), or a person socially and/or politically affiliated with Metis organizations (especially in the Prairie provinces), an affiliation that is itself often a function of legal exclusion under the Indian Act regime. Studies conducted after Bill C-31 (An Act to Amend the Indian Act, proclaimed in force on June 28, 1985) began to have significant impact on who is entitled legally to be registered under the Indian Act will increasingly find confusion between "Indian" and "Metis" since respondents may identify socially or organizationally with the latter term yet in fact be "Indians" for legislative purposes. The evolution of identity-formation in this context can be expected to be highly complex, with local and regional variations. Researchers are advised to give some time to ensuring that the terms they use for analytical purposes accord with respondents' perceptions rather than with orthodox legislative or administrative usages.

Inmate:

Defined as a person convicted of a criminal offence serving a sentence in a penal institution. Federal offenders refer to those under the jurisdiction of the Correctional Services of Canada, which includes all inmates serving a sentence of two or more years. All provincial offenders are serving a sentence of less than two years. In the study, the use of the term "offender" is not used as a synonym for "inmate" insofar as respondents are responding to questions about their experience with policing or plea bargaining which may not have led to a conviction or to a prison sentence. In addition, six respondents were residing in a half-way house rather than in a prison or penitentiary.

Criminal Justice System:

Refers to the entire state apparatus responsible for the prevention, detection, prosecution and punishment of illegal activities. It includes the police, courts, legal counsel, court workers, prison staff, parole boards, parole and probation officers, and prosecutors.

Justice System Procedures:

- plea bargaining: Dicussions between offenders and officials (prosecution, judges, court workers, etc.) about what a charge or a sentence might be depending upon the plea of the offender.
- charge bargaining: Discussions or negotiations between the offender, or his or her lawyer, and any official concerning the charge that might be brought.
- sentencing bargaining: Discussions or negotiations between the offender, or his or her lawyer, and any official concerning the sentence that might be received.

- community assessments: Private volunteer, correctional services and community support groups involved in the planning and supervision of an offender under any of the various release programs. Community assessment is essentially the input that these groups have as to the likelihood, conditions and success of release for an offender.
- temporary absence program: Offenders are eligible for two types of temporary absence (escorted and unescorted). Unescorted absence can be obtained by application to the Correctional Service after serving one-sixth of a sentence, while an escorted absence is available at any time for humanitarian, rehabilitative or medical reasons. Absences are normally for up to 72 hours.
- parole: Release (with or without conditions, permanently or for specific periods — e.g., days, weekends) from custody and imprisonment. Parole may be granted by the parole board at any time, after one-third of a sentence is completed or, in the case of day parole, after one-sixth of the sentence is completed.
- earned remission and mandatory supervision: Earned remission refers to "good behaviour" during imprisonment that is calculated to a maximum of one-third of a sentence toward mandatory supervision release. In this case, the parole board is not involved in decision-making while the corrections staff determine the amount of earned remission and, hence, the amount of time to deduct from a sentence. Mandatory supervision refers to release with supervision by a parole officer, subject to a set of conditions governing reporting, movement and association.

APPENDIX 2

INDIVIDUAL RESPONSES TO SELECTED SUBJECTIVE QUESTIONS

The following material groups together some of the more characteristic written responses of Native offenders to certain questions which elicited personal replies and opinions. As noted for each question, the sample size varies as not all respondents replied to each question while some others provided more than one comment. To facilitate an assessment of the predominance or seriousness of particular responses, we have indicated the number of inmates who gave opinions for each sub-category, along with a sampling of the kind of specific replies provided.

Police Disparity

Question: How do the police treat Natives and non-Natives differently? Total Comments = 219

Negative Attitudes and Stereotyping [76]: ignorance of Native cultural values and spirituality; racism and fear govern police treatment of Native people.

Physical and Psychological Abuse [69]: intimidation and manipulation are employed by police against Native people (individual stories of "elevator rides", "dogs" and other extreme actions used unnecessarily on Native offenders were given).

Procedural Abuse [44]: Native people treated differently in charges, bail, arrest release, plea bargains, negative treatment in jail, rushing things for first timers. Police take advantage of Native peoples' ignorance of the law and inability to stand up for themselves.

Native Contribution to Abuse [14]: some police OK and some prejudiced; attitudes of Native people contribute toward negative treatment.

Abuse and Poverts [10]: one law for the poor and one law for the rich; "if you break the law then you're treated as if you were scum."

Socio-Demographic Variability [6]: depends on geographic area - some worse than others; differences in appearance, job, values and background critical to how one is treated.

Judge's reasons

Question: What were the reasons given by the judge when he/she imposed sentence? Total Comments = 149

Record [49]: adult and juvenile; potential violence; Appeal Court's memo on tightening up on sentences re violent offenders; just got out of penitentiary; was on mandatory supervision; because "unlawfully at large"; no hope for rehabilitation; similar to last offence; charges too close together; dropped charges; too many leniencies in the past; probation not working, time to put a stop to inmate being "in and out".

Punishment [30]: someone has to pay for loss of two lives; someone has to pay for woman's death and doctor who gave her pills is already dead; punishment of 3 years with early parole; refused to testify; because should have pled guilty earlier; nature of crime - horrendous violence; accused playing significant part; potential ramifications of crime; crime warranted incarceration and punishment; can't go around doing criminal acts; police should be respected; good for her to taste life behind bars; time for him to think; might learn lesson from long sentence.

Rehabilitation and Leniency [28]: young age; her first time; no record; no threat; lots of positive potential; accused's wife in family way; sentenced to treatment centre; accused needs help; believed accused; took "dead" time into consideration; forced confinement to force him to dry out; drinks too much.

Deterrence and Example [16]: people should be taught a lesson; make an example of them; bad influence on others; go by sentence co-accused received; guilty on co-accused's evidence; as thieves were bad example for their children.

Protection of Public [12]: menace to society; too many weapons; justice has to be done.

Personal Attack on Accused's Integrity [8]: liar; unreal story; psychotic; looks like you could do it.

No Choice [4]: 2nd degree equals a life sentence although crime more like a manslaughter.

Warning and Lecture [2]: judge read off life sentence then gave 5 years; come back and I'll give you more time.

Judicial Unfairness

Question: Why did you think the judge wasn't fair? Total Comments = 148

Punitive Judge [42]: nature of crime didn't warrant the time; first time; accused made example of; "hanging" judge. Judge always gives incarceration instead of considering alternatives, i.e., psychiatric help or alcohol treatment.
Prejudiced Judge [31]: judge prejudiced against Native people; showed little respect;

judge not impartial; presided over both accused and co-accused although severed cases; judge was accused's lawyer before; judge was victim's brother.

Inconsiderate Judge [22]: rushing through proceedings; overworking defence lawyer; prejudged case; didn't assist confused accused; didn't give accused chance to speak; disbelieved accused.

Procedural Injustice [14]: judge's actions perceived as improper leading towards unjust treatment; judge in error as to charge; knew accused not guilty; sentenced on 3 charges although 2 got dropped; turned jury against accused; shouldn't have got probation along with one year sentence; insufficient evidence; let crown lead evidence; conspiracy with other court officials.

Denial of Mitigation [13]: judge didn't take all factors into consideration; accused was drunk; didn't have all the evidence; wrongfully sentenced; didn't take remand into consideration; accused under medical care.

Over-Reliance on Record [11].

Inconsistent Sentencing [6]: co-accused got different sentence; co-accused sentence should not affect accused's sentence.

Judge not Impartial [4]: judge sided with society/crown/police even if he felt accused was sincere.

No Blame [3]: judge more than fair; just doing his job.

General [2]: no one should be locked up; none of it was fair.

Institutional Treatment Disparity

Question: How do you think prison staff treat Natives and non-Natives differently? Total Comments = 251

Prejudicial Stereotyping [153]: staff practice discriminatory treatment; stereotyping them as alcoholics and "skid-row" types; using name-calling and snide remarks; thinking the worst of them in any situation; and generally having bad attitudes toward Native people. This was seen perhaps as stemming from ignorance of Native spiritual and cultural ways as well as from a fear of 'red power' movement.

Harassment [72]: Native people perceive staff playing "head games" with them through petty charges and harassment. The staff will sometimes provoke them and charge them if there is a reaction. An obvious favouritism is seen by staff toward non-Natives through preferential treatment in getting jobs, passes, and telephone calls. If Natives and non-Natives in conflict, the Native inmate will get charged and the non-Native will get a warning. Sometime Natives perceive certain actions to be abuses of authority; charging Natives if stand up for rights or involuntarily transferring them thus forcing many Natives to keep low profile even when perceive things as obviously unjust. The abuse of authority is perceived by the Native offenders as a manipulation of power by staff. Religious persecution is perceived to be another

area of harassment where sweet grass is not allowed in cells, medicine bundles are searched indiscriminately and Native ceremonies are difficult to access due to lack of elders, limitation on numbers able to participate, and general reluctance to have them.

Depends on Inmate [26]: twenty-six Native respondents stated that the prejudice depended on individual staff and inmates. Some also thought that some staff were becoming more aware of Native issues and trying to overcome negative stereotyping. They thought that fault was on both sides and that progress was being made through positive reinforcement.

Parole and Probation Disparity

Question: How do parole and probation officers treat Natives and non-Natives differently? Total Comments = 78

Harsher Restrictions [19]: higher expectations put on Natives; staff more dominating with Natives.

Stereotyping [15]: Native people seen as alcoholics and losers.

Racism [12]: staff are racist with redneck (i.e. negative) attitudes.

No Trend of Disparity [11]: some do, some don't; have to treat differently because different culture; just doing their job; go by the book.

Procedural Disparity [10]: Natives don't get parole partially because they can't present their case in an articulate manner; if they don't make it on first parole attempt there is no second chance; the parole process is slower for Native people; Natives don't "brown-nose" so it's more difficult to get parole; non-Natives get out on parole quite quickly.

Nonsupportive [5]: staff are mean; don't explain rules clearly; "sluff" things off for Native people.

Ignorance of Native Culture and Issues [6].

Understand Sentence

Question: What didn't you understand about the hearing or sentence you received? Total Comments = 68

Various Parts [24]: court procedure, criminal law, juvenile record, wrongful allegations.

Everything [20]: doesn't speak English well, unaware of rights; felt helpless and didn't understand the legal jargon.

Inconsistencies [19]: the perceived injustice through inconsistency, disparities, etc.

Judicial Injustice [5]: judges perceived as unjust in decision-making, i.e., errors.

Sentencing Changes

Question: What would you change about the way sentencing is carried out in Canada? Total Comments = 237

Rehabilitation and Alternatives to Prison [41]: make it difficult to get time for institutionalized individuals and move people slowly into criminal justice system by keeping younger people in provincial jails through utilizing rehabilitative programs, e.g., halfway houses, treatment centres, camps, "out programs", etc. Being rehabilitative, these programs combat institutionalization. People become more bitter and dangerous in jail. Help family of accused maintain a positive relationship and involve community members, e.g., employer, in the sentencing process. The system should be creative in offering alternatives to prisons through restitution, reparation, community services, etc.

Assessments of Individuals [39]: each accused individual needs in-depth consideration regarding his offence circumstances, personal situation, background either through pre-sentence reports and/or investigation by all concerned parties, e.g., lawyers, judges, crown, etc. If he is attempting to rehabilitate, then should be considered in sentencing. Factors such as family problems, age, record should be considered carefully. The individual should also be able to speak for himself as well.

Indigenize System [38]: more Native people employed in system leading to an all Native law system: more Natives should be involved as interpretors in translating the "legal jargon"; should be more Native judges, lawyers, Native jurors, Native courtworkers, etc. The Native justice system could be based partially on traditional values with their own court system on the reserve and if Native judges not available, then Native person or committee can be working with judge on his decision-making. There should also be institutions, camps, etc., run by Natives for Natives. Set up jobs for people coming out of institution; band should have own economic base to hire own legal representation with someone overlooking the system all the time; and criminal law should not infringe on treaty rights, e.g., firearms. Education should be given on Native spiritual ways in the community and have Native spiritual programs in the prisons; also educate people on the Native mentality.

Shorter Sentences [17]: more leniency, 10 years maximum even for murder as any longer time institutionalizes individuals, especially life sentences, where irreparable damage is done so that individual may never be able to live a "normal" life. No examples or overly harsh sentences should stand and the sentences should be determinate ones.

End Sentencing Disparity [19]: if sentence is 5 years, then get 5 years; the sentence should be in accordance with the crime: big crime = big time and little crime = less time; quit giving long sentences for stupid charges; equalize sentencing across the country instead of being open to whims of each community depending on how racist they are; set standards for each offence and follow rules; have fair sentencing, more consistency and change the way Native people are charged. Sentences should be

carried out as prescribed, i.e., parole eligibility should be mandatory, etc.; long sentences should have reviews every 1-2 years.

Judges [15]: sensitize judges re Native people possibly through workshops; judges shouldn't have such a broad discretion instead should be only able to vary sentence a little; judges need counselling and "bad" judges (impartial or prejudiced) should be screened out from "good" ones; all judges should be consistent and more careful in their judgments.

Education [11]: more on criminal law justice system on a general basis in the schools and communities; there should be someone in the courts explaining things; lawyers should be explaining sentencing process, etc. to accused.

Change Whole System [8]: treat summary offences out of court and indictable offences in court; change system to accommodate all different cultures; bring system down to layman level; abolish jails.

Fit Sentence to Crime and Criminal [8]: don't sentence same as others even though the same crime; sentences should vary with situation and individual's guilt; should have different sentences and prisons for sex offenders; should put sex offenders in more serious bracket than bank robber and sex offenders should not be considered for early parole; crimes against people should get harsher sentences than property crimes.

Lawyers [7]: should actually represent accused and work for them; should be more access to good lawyers; not just legal aid; should be given time to get a good lawyer.

"Justice" [4]: make sure courts got all their facts straight before giving sentence; return "justice" to system by making sure accused is guilty and convict on charge before giving a sentence.

Remand Time [4]: this should always be taken into consideration in sentencing.

Toughen System [4]: make harsher conditions and shorter time; go back to eye for an eye; maintain the do the crime - do the time approach.

Parole [3]: sex offenders should not get early parole; parolee must have committed offence to have his parole revoked; separate probation terms for Natives.

Why Bother [3]: hopeless; not his system so why bother to change it - even Indian law system would give more power over others, therefore, not appropriate; need less game playing and more honesty but lawyers, etc. are incompetent. Leave as is because better now than 15-20 years ago.

Bail [2]: should be allowed through bail bondsman; courts should be more lenient with accused in obtaining bail.

Mandatory Supervision [2]: abolish it; change it.

Compensation [2]: being held without bail and found innocent should be compensated for time lost at work or loss of employment etc.; compulsory compensation and apology for people convicted wrongly.

Plea Bargaining [1]: make sure lawyers/crown/judge can't make deals with each other at accused's expense.

Pre-Sentence Reporting [1]: pre-sentence report too subjective and too influential regarding conviction and sentence.

Criminal Justice System, Native Offender and Changes

Question: Do you have any other comments or recommendations to make on the criminal justice system and the native offender? Total Comments = 241

Indigenize System [50]: more Native people in the criminal justice system as guards, counsellors, jurors, lawyers, etc. to act as watchdogs, helpers, interpretors of the system. It was felt that Native people, because of their common background, are more able to assist offenders in understanding, adjusting and rehabilitating. Also more Natives in policy making in Ottawa may produce more realistic programming for Native offenders.

Native Education and Cultural Recognition [29]: better education and training for Natives, especially ex-cons, and improve communication skills of Natives. Through education and other means a better self-image for Natives will be promoted. Get Native culture back through better spiritual guidance, more time to practice their ways and have their beliefs recognized; the recognition of Native people's spirituality is essential in that it be understood, accepted and equalized by ensuring appropriate authorities appreciate it through compulsory briefing; make Natives less dependent on government.

End Discrimination [22]: stop discrimination by ensuring equal sentencing; by Natives getting same fairness as non-Native people; by Natives not automatically being judged guilty because they are Natives; by there being no stereotyping of Natives; and authorities who are prejudiced against Natives should be screened out, i.e., judges.

Reduce Stereotyping [21]: accept Native offenders as individuals, treat them better by listening to them, trusting them and if they have a feasible treatment or release plan, then follow it through because success is more likely if they are motivated. This follows through from looking carefully at each offender's personal circumstances and criminal offence before determining the sentence. Also ensure that accused understands the process by having someone explaining things to him. Make sure guilty intent is there before sentence or treatment assessment.

Separate Native System [20]: Native justice system which seems to stem from Native self-government was seen as an alternative to the criminal justice system.

Improve Rehabilitation [20]: rehabilitation was seen to be an important aspect of the system which needed improvements through more wilderness camps, Native spiritual camps, more Native halfway houses and other community alternatives to prison which would also save taxpayers' money. Also, when Native people appear in court, they should be treated for drug/alcohol problems instead of being automatically sent to jail. More communication between offender and family/outside community should be encouraged. To assist with actual rehabilitation of offenders, more jobs should be

made available to Natives as the stigma of being ex-cons often makes it difficult to find jobs on their own. Finally, at the actual sentencing the individual's support system should be utilized as well as referring the individual to support services to assist with plans, etc. These measures should be especially used for first timers from reserves or the bush who should never get incarcerated.

Procedural Change [16]: should change Unescorted Temporary Absences and parole systems to make them faster and thus more efficient in the long run. Improve the plea bargaining process by having complete openness and follow through by all concerned parties. Should be more bail availability for Natives as well as more "escorted temporary absences" and "unescorted temporary absences"; abolish prisons; take remand time into consideration when determining sentence; equalize sentencing practices across the board; abolish mandatory supervision; give shorter sentences; reduce sentencing based on record; reduce harassment from police; reduce policing of society.

Educate Court System Regarding Native Issues [12]: media should focus on successes in prison releases rather than just the failures. Media should also give a more positive portrayal of Native culture. Educate both Natives and whites to each other's ways.

Self-Help Groups [11]: there should be more positive programming for Native people in prison through more money being allotted in the area of brotherhoods or the brotherhoods should be allowed to earn money for activities.

Lawyers [6]: lawyers should work to get charges dropped; better access to lawyers; should be more money for good lawyers; should have one lawyer follow through on one case; and lawyers should have facts straight before they present it to the courts.

Reject Separate Native System [3]: no separate system as even Indians looking after their own are sometimes harder on their own kind.

Hold Inquiry Into the Justice System [3].

Judges [2]: prospective judges should spend time in jail; alternate judges so they can remain impartial and never see an accused twice.

Harsher Sentencing/Protect Public [2].

No View [1]: doesn't understand system well enough to say.

Group Discussions

The group discussions held in the institutions through the Brotherhoods, Sisterhoods and Inmate Committees generated numerous personal comments resulting in the following outline of concerns with prison staff treatment of Native inmates:

- non-Natives cascade much faster to minimum institutions.
- don't allow Natives to speak their own language on telephone calls.

- the institutional disciplinary court is very biased and unjust as decisions are made before accused appears; charges read and discussed before accused appears, and can't cross-examine living unit officers. Never saw an inmate found innocent and even if he was found not guilty, it would still go on the file.

- a living unit officer can write anything down in the file and if not responded to by the inmate, then he/she labelled with having a bad attitude.

- steady harassment, psychological provocation and manipulation all the way through the sentence.

- living unit officers have no experience or knowledge of Native people.

- staff charge Native inmates with petty things.

- their authority is used abusively and not with common sense.

- a different philosophy comes with each change of shift so seen as inconsistent.

- staff encourage "rats" and "brown-nosers".

- staff are afraid of people who will stand up for their rights and potential leaders are transferred.

- disparity in what jobs Native inmates get with non-Natives getting better paying jobs, e.g., in the kitchen.

- staff afraid of red power and Native group getting too powerful.

- staff want to initiate programs so they resent self-help groups.

ENDNOTES

1. Native population estimates are a controversial area. The 1981 Census figures showed 491,465 people who self-identified as Indian, Inuit or Metis, about 2% of the Canadian population. However, there is widespread criticism of this figure as being low by a factor of between 25% and 50% when compared to late 1970's estimates compiled by Federal departments, which set the figure as from 4-5% of the population. Data on federal native inmate figures for 1980-81 are drawn from Sharon Moyer et al., Native and Non-Native Admissions to Federal, Provincial and Territorial Correctional Institutions, Ottawa, Ministry of Solicitor-General, No. 1985-34, p. 2.2
2. Moyer et al., ibid., p. 2.4
3. Paul Havemann, et al., Law and Order for Canada's Indigenous People, Ottawa, Ministry of Solicitor-General, No. 1984-7, p. 99.
4. Simon N. Verdun-Jones and Gregory K. Muirhead, "Natives in the Canadian Criminal Justice System: An Overview", Crime and/et Justice 7/8:1 (1979/80) 3-21.
5. William Ryan, Blaming the Victim, 2d ed., New York, Vintage Books, 1976, pp. 9-10.
6. Ibid., pp. 7-8.
7. G. Manuel and M. Posluns, The Fourth World, Don Mills, Collier MacMillan, 1974.
8. C.H.S. Jayewardene, "Policing the Indian". (1979-8) 7/8 Crime and/et Justice 44.
9. Supra, note 4, p. 18.
10. Jim Harding, "Development, Underdevelopment and Alcohol Disabilities in Northern Saskatchewan", 1978 Alternatives 7:4, p. 33.

11. Supra, note 3.

12. D. McCaskill, "Native People and the Justice System" in I.A.L. Getty and A.S.Lussier, eds., As Long as the Sun Shines and the Water Flows, Vancouver, University of British Columbia Press, 1983, pp. 290-291.

13. See, for example, C. Chartier and O. Mercredi, "The Status of Child Welfare Services for the Indigenous Peoples of Canada: The Problem, The Law and The Solution" (1983), 5 Canadian Legal Aid Bulletin, Nos. 2-3, p. 163; Patrick Johnston, Native Children and the Child Welfare System, Toronto, James Lorimer and Co., 1983; and Bradford W. Morse, "Native Indian and Metis Children in Canada: Victims of the Child Welfare System", in G.K. Verma and C. Bagley, eds., Race Relations and Cultural Differences: Educational and Interpersonal Perspectives, London, Croom-Helm Ltd., 1984, p. 259.

14. See, for example, Ken Traisman, "Native Law: Law and Order among Eighteenth Century Cherokee, Great Plains, Central Prairies, and Woodland Indians" (1981), 9 American Indian Law Review 274; Bradford W. Morse, "Indian and Inuit Family Law and the Canadian Legal System" (1980), 8 American Indian Law Review 199; and Norman Zlotkin, "Judicial Recognition of aboriginal customary law in Canada: selected marriage and adoption cases", [1984] 4 C.N.L.R. 1.

15. Mara Gray, "Traditional Plains' Justice System", Edmonton, Native Counselling Services of Alberta, 1980, p. 33.

16. J.T.L. James, "Toward a Cultural Understanding of the Native Offender" (1979), 21 Canadian Journal of Criminology 456.

17. Supra, note 12, p. 293.

18. J.H. Hylton, "The Native Offender in Saskatchewan: Some Implications for Crime Prevention Programming" (1982), 24 Canadian Journal of Criminology, pp. 126-7.

19. Don McCaskill, Patterns of Criminality and Correction Among Native Offenders in Manitoba: A Longitudinal Analysis, Ministry of the Solicitor-General, Prairie Region, Saskatoon, 1985, p. 11.
20. Ibid.
21. Ibid.
22. Ibid.
23. Ibid., p. 15.
24. James A. Vantour et al., Report of the Study Group of Murders and Assaults in the Ontario Region, Ottawa, Correctional Services Canada, 1984.
25. Ibid., p. 37 quoting Eric H. Steele and James B. Jacobs, "A Theory of Prison Systems", Crime and Delinquency, April 1975, p. 149.
26. Supra, note 3, p. 62.
27. Supra, note 3, p. xii.
28. Supra, note 3, p. xi.
29. Canadian Corrections Association, Indians and the Law, Ottawa, 1967, p. 55.
30. W.K. Greenaway, "Crime and Class: Unequal before the law", in John Harp and John R. Hofley, eds., Structural Inequality in Canada, Scarborough, Ontario, Prentice-Hall, 1980, p. 251.
31. Supra, note 3, p. 33, from Oliver J. Brass, Crees and Crime: A Cross-Cultural Study, Ph.D. Thesis, University of Regina, 1979, p. 33.
32. Supra, note 3, p. 61.
33. Ibid., p. 62.
34. Supra, note 3, p. 94.
35. Ibid., p. 96.
36. The Citizen, Ottawa, Thursday, October 24, 1985, p. A8.
37. Ibid.

38. Ibid.

39. Ibid.

40. V. Ross, "Inside Canada's Prisons", Macleans, June 6, 1983.

41. J.D. Bissett, "Problems of Native Versus Non-Native Differential Access to and Success on Conditional Release, Implications of the National Parole Board's Role and its possible Policy Development", 1982, p. 8 (unpublished, Ministry of the Solicitor-General).

42. Canadian Corrections Association, "Brief on the Woman Offender" (1969), 11 Canadian Journal of Corrections, No. 1, p. 37.

43. Ibid., p. 39.

44. A.C. Birkenmayer and S. Jolly, The Native Inmate in Ontario, Toronto, Ontario Ministry of Correctional Services and Ontario Native Council on Justice, 1981, p. 27.

45. Supra, note 19, p. 117.

46. Supra, note 42, p. 27.

47. Communications Division, Ministry of the Solicitor-General, Native Peoples and Justice, Ottawa, Information Canada, 1975.

48. Supra, note 3, p. 175.

BIBLIOGRAPHY

Badcock, William T. and Gail Michalis, Native People and Canada's Justice System: Programmes and Issues, Vol. 2, Indian and Northern Affairs, Ottawa, Ontario, 1979.

Birkenmayer, A.C. and S. Jolly, The Native Inmate in Ontario, Ontario Ministry of Correctional Services and Ontario Native Council on Justice, 1981.

Bissett, J.D., "Problems of Native Versus Non-Native Differential Access to and Success on Conditional Release, Implications of the National Parole Board's Role and its Possible Policy Development", Unpublished, 1982.

Brass, Oliver J., "Crees and Crime: A Cross-Cultural Study", mimeographed, University of Regina, 1979.

Canada, Canadian Sentencing Commission, Sentencing Reform: A Canadian Approach, Ottawa, Supply and Services Canada, 1987.

Canada, Indian Affairs and Northern Development, Indian Conditions: A Survey, Ottawa, 1980.

Canada, Ministry of the Solicitor General, Research Division, "Selected Trends in Canadian Criminal Justice", Prepared for Federal/Provincial Conference of Ministers Responsible for Criminal Justice, Ottawa, October 1979.

Canada, Ministry of the Solicitor General, Communications Division, Native Peoples and Justice, Ottawa, Information Canada, 1975.

Canadian Corrections Association, "Brief on the Women Offender" (1969), 11 Canadian Journal of Corrections, No. 1.

Canadian Corrections Association, Indians and the Law, Ottawa, Ontario, 1967.

Caves, et al., "Education for Native Inmates in Federal Institutions", Ottawa, Riverview August Inc., 1983.

Chartier, Clem and Ovide Mercredi, "The Status of Child Welfare Services for the Indigenous Peoples of Canada: The Problem, The Law and the Solution" (1983), 5 Canadian Legal Aid Bulletin, Nos. 2-3, p. 163.

The Citizen, Ottawa, Thursday, October 24, 1985, p. A8.

Finkler, H.W., Inuit and the Administration of Criminal Justice in the Northwest Territories: The Case of Frobisher Bay. Ottawa: Supply and Services Canada, 1976.

Gray, Mara, "Traditional Plains Indian's Justice System", Edmonton, Native Counselling Services of Alberta, 1983, 25 pages.

Greenaway, W.K., "Crime and Class: Unequal before the law", in Structured Inequality in Canada, John Harp and John R. Hofley, eds., Scarborough, Ontario, Prentice-Hall, 1980.

Hagan, John, "Criminal Justice and Native People: A Study of Incarceration in a Canadian Province", in Aspects of Canadian Society, Raymond Breton, ed., Montreal, Canadian Sociology 2nd Anthropology Association, 1974.

Harding, J., "Development, Underdevelopment and Alcohol Disabilities in Northern Saskatchewan" (1978), Alternatives 7:4.

Havemann, Paul et al., Law and Order For Canada's Indigenous People, Ottawa, Research Division, Ministry of the Solicitor-General, 1984.

Himelfarb, Alexander and James Richardson, Images of Society: Sociology for Canadians, Toronto, McGraw-Hill-Ryerson Ltd., 1982.

Hylton, J.H., "The Native Offender in Saskatchewan: Some Implications for Crime Preventing Programming" (1982), 24 Canadian Journal of Criminology 126.

Information Services, Native and Non-Native Population Profile Reports, Correctional Services Canada, June 30, 1983.

_____, Native Population Profile Report, Correctional Services of Canada, July 1985.

James, J.L.T., "Toward a Cultural Understanding of the Native Offender" (1979), 2 Canadian Journal of Criminology, No. 4.

Jayewardene, C.H.S., "Policing the Indian" (1979-80) 7/8 Crime and/et Justice 44.

Jobson, Keith and Gerry Ferguson, "Toward a Revised Sentencing Structure for Canada" (1987) 66 Can. Bar Rev. 1.

Johnson, Patrick, Native Children and the Child Welfare System, Toronto, James Lorimer and Co., 1983.

La Prairie Pitcher, Carol, "Native Women and Crime", Ottawa, Research Division, Ministry of Solicitor-General, 1985.

_____, "Selected Criminal Justice and Socio-Demographic Data on Native Women", Ottawa, Research Division, Ministry of the Solicitor-General, 1985.

McCarney, Rosemary, Legal Services for Native People in Canada, Ottawa, Canadian Law Information Council, Occasional Paper No. 6, 1982.

McCaskill, Don, "Native People and the Justice System", in As Long as the Sun Shines and the Water Flows, Getty, I.A.C. and Lussier A.S., eds., Vancouver, University of British Columbia Press, 1983.

_____, Patterns of Criminality and Correction Among Native Offenders in Manitoba: A Longtitudinal Analysis, Ministry of Solicitor-General, Prairie Region, Saskatoon, 1985.

Morse, Bradford W., "Native Indian and Metis Children in Canada: Victims of the Child Welfare System", in G.K. Verma and C. Bagley, eds., Race Relations and Cultural Differences: Educational and Interpersonal Perspectives, London, Croom-Helm Ltd., 1984, p. 259.

_____, "Indian and Inuit Family Law and the Canadian Legal System" (1980), 8 American Indian Law Review 199.

Moyer, Sharon et al., Native and Non-Native Admissions to Federal, Provincial and Territorial Correctional Institutions, Ministry of the Solicitor-General, Ottawa, No. 1985-34.

Parker, Graham, An Introduction to Criminal Law, 2nd ed., Toronto, Methuen, 1977.

Reasons, Charles E., "Native Offenders and Correctional Policy" (1977), Crime and/et Justice, No. 4.

Special Committee on Indian Self-Government, Indian Self-Government in Canada: Report of the Special Committee, Parliament of Canada, 1983.

Traisman, Ken, "Native Law: Law and Order Among Eighteenth Century Cherokees, Great Plains, Central Prairie and Woodland Indians" (1981), 9 American Indian Law Review 274.

Vantour, James A., et al., Report of the Study Group of Murder and Assaults in the Ontario Region, Ottawa, Correctional Services of Canada, 1984.

Verdun-Jones, Simon N. and Gregory L. Muirhead, "Natives in the Canadian Criminal Justice System: An Overview" (1979/80), Crime and Justice, No. 8:1, 18.

Zlotkin, Norman, "Judicial Recognition of Aboriginal Customary Law in Canada: Selected Marriage and Adoption Cases", [1984] C.N.L.R. 1.